STATUS OF CONTINUING DISABILITY REVIEWS

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

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STATUS OF CONTINUING DISABILITY REVIEWS

FRIDAY, MARCH 23, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Atlanta, Ga.

The subcommittee met at 10 a.m., pursuant to notice, in the auditorium, Grady Memorial Hospital, Atlanta, Ga., Hon. J. J. Pickle (chairman of the subcommittee) presiding.

[The press release announcing the hearing and Mr. Pickle's opening statement follow:]

[Press release No. 7, Monday, March 19, 1984]

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN, SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A FIELD HEARING ON THE STATUS OF CONTINUING DISABILITY REVIEWS (CDR)

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a hearing to examine the present status of the social security disability review process. The hearing is to be held in the auditorium of the Grady Memorial Hospital, 80 Butler Street, Southeast, Atlanta, Georgia, on Friday, March 23, beginning at 10:00 a.m.

The hearing will focus on three main concerns: first, the effect of the present procedures on disability recipients; second, the growing pressure on the states to implement their own administrative procedure for this program in defiance of federal policy guidelines; and third, the inadequacy of administrative initiatives to resolve this crisis.

The Subcommittee expects to take testimony from invited witnesses including beneficiaries, state officials, and representatives from the Department of Health and Human Services.

In announcing the hearing, Chairman Pickle noted:

"It is critical that the disability program be properly administered since it provides the primary source of income for the majority of over 6 million physically or mentally disabled Americans.

"During the past three years, over one million disabled workers have had their continuing eligibility reviewed and 45 percent of them have been told they are no longer eligible for benefits. However, this determination has often been made erroneously. Nearly two-thirds of those who appeal these terminations have their benefits restored after enduring a lengthy appeals process. This process of review, benefit disruption, and legal review represents a serious emotional and physical threat to millions of disabled Americans and their families.

"As a result of the CDR procedures used, the whole social security disability program has been plunged into administrative chaos. In twenty states, the federal courts have intervened and substituted a court ordered standard of review for that called for by the Social Security Administration. In nine other states, the governors have declared a self-imposed moratorium on processing disability reviews. This combination of federally court ordered and state imposed actions has effectively brought to a halt the uniform national system of disability insurance under social security.

"The human costs of the current crisis," said Mr. Pickle, "are incalculable. The purpose of the hearing Congressman Wyche Fowler, Jr. (D., Georgia) and I are hold-

ing is to demonstrate beyond doubt the folly of the Administration's reluctance to support the kind of legislative solution my Subcommittee has developed and the Committee on Ways and Means approved without opposition."

WRITTEN COMMENTS IN LIEU OF PERSONAL APPEARANCE

For those who wish to file a written statement for the printed record of the hearing, six copies are required and may be submitted by the close of business Friday, April 6, 1984, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102, Longworth House Office Building, Washington, D.C. 20515.

OPENING STATEMENT OF HON. J. J. PICKLE, CHAIRMAN OF THE SUBCOMMITTEE ON SOCIAL SECURITY, COMMITTEE ON WAYS AND MEANS

Once again I find myself joining with my Congressional colleagues to conduct a hearing concerning the social security disability program. For several months I have hoped that Congress and the Administration could reach an agreement as to how this situation could be resolved. Indeed, I thought such an understanding had been reached. Now to my surprise and regret I find that such is not the case.

However, I am pleased to report that yesterday the House voted overwhelmingly to approve the rule for debating H.R. 3755, and that we can expect the bill to come before the House hopefully for final approval next Tuesday.

As those of you have followed this legislation from the beginning are aware, this has not happened over night. In fact, we in the Congress have worked for several years to ensure that the social security disability program is run in a manner which is equitable to all claimants and is also in line with the specific and limited objectives of the program as laid out in the law.

Looking back for a moment I remember that in the last 1970's it was widely felt that in order to address apparently uncontrolled growth in the program, stronger administrative controls would be necessary. Congress, therefore, enacted amendments which increased work incentives for beneficiaries and which gave the Social Security Administration greater administrative control.

Unfortunately, a too hasty and insensitive implementation of one part of the 1980 Amendments, those sections calling for a review of disability beneficiaries at least once every three years, has proven disastrous.

The problem is not the disability reviews themselves. Review of the disability rolls on a periodic basis is necessary and good. These recent reviews have, in fact, removed from the rolls many people who can work and who no longer meet the definition of disability in social security law.

The problem is rather the guidelines and procedures under which these reviews are performed. These harsh procedures have worked great hardship both on those who benefit from, and those who must administer this program.

Hundreds of thousands of disabled people have been forced to appeal to SSA to retain their rightful benefits. Over 160,000 have been reinstated. Indeed, nearly two-thirds of those who appeal their cases are reinstated.

Although they are reinstated, they can hardly be described as successful, because the process of appeal is lengthy, stressful and often expensive. Thousands of those who are reinstated have endured substantial hardship.

Because of this mass litigation, the federal courts have held on numerous occasions that revised procedures must be used in conducting these reviews. Today twenty states are operating this *national* disability program under court orderd guidelines which SSA opposes and has refused to apply to the other states.

In addition, the governors in nine states have declared their own moratorium on the processing of disability terminations under the SSA guidelines.

The bottom line is that today the program is operating in a state of administrative uncertainty and chaos which works untold hardship on thousands of beneficiaries.

Last June, after careful deliberation, we drafted legislation which establishes a procedure for decision making that protects both the beneficiary and the program. It establishes a sound and fair medical improvement standard. It addresses the problems of how to handle federal appellate court decisions, of uniform national policies, of multiple impairments, and of mental disabilities. The bill makes permanent the continuation of benefits upon appeal, and it calls for face-to-face interviews with claimants at the state agency level. In short the bill responds to the needs expressed to the Committee last year.

It is my feeling that the time to act is now. However, the Administration has come before the Congress and testified that they do not favor any legislation in this area. We in Congress are being told that this situation, which has lasted for three long years, can be remedied by internal administrative reforms. I personally do not see how this is possible, but I must try to keep an open mind. So I would ask each of you today three questions. Do you still believe there are problems in the way SSA is conducting disability reviews, are these problems being solved by the Administration, and do you support the legislative solutions my Subcommittee has developed?

Your answers to these questions are critical. If, as I believe, we truly are in a mess, then we need to send this message loud and clear to the Administration. You the public are the real judges of what should be done and how this program should be run. I look forward therefore, to hearing your testimony.

Chairman PICKLE. The Chair will call to order the meeting of the Social Security Subcommittee. We are pleased to be here in Atlanta to conduct this hearing. I wish it was not necessary to be conducting hearings here and in other parts of the country, because we should have long since passed legislation that would bring relief to those people who are receiving disability benefits, and particularly those who have been terminated previously.

I can report to you, though, that we are making some progress. We passed legislation designed to improve the procedures of review some 5 or 6 months ago. That legislation has been held in abeyance as a part of the pending tax bill. That has now been separated—this bill has been separated from the tax bill and will be moved forward separately.

Yesterday, the House of Representatives passed by an overwhelming vote—almost 10 to 1—the rule that will provide for a discussion and action on the disability bill this coming Tuesday, so we are making good progress in the House, and we hope to have this bill through the House of Representatives by next Tuesday.

It is desperately needed. Not that the reviews are bad. They are a good part of the overall procedure, but the manner in which the reviews have been conducted has been harsh and unnecessary, and a cruel process has resulted.

The administration set out to save money, and to do it by removing people from the disability rolls. We ought to have a better review process, and this hearing today is to hear from you individually and from other witnesses, how the program is working in your area, and what is needed, and what we should take back with us to Washington.

I am particularly pleased that two of my colleagues could be with us today. Congressman Wyche Fowler is a member of the Social Security Subcommittee. He is a very valued member. He is active. He has a great care and concern for those people who have had their benefits terminated, and has shown as much initiative as any member of our committee.

We are pleased that he would invite us to come to Atlanta, and we are honored that he would ask us to be here. I am pleased also that my colleague, Ed Jenkins from Georgia, has come down from Jefferson——

Mr. JENKINS. Jasper.

Chairman PICKLE. Jasper—to be with us this morning. Ed Jenkins is one of the leaders of the House Ways and Means Committee, and he has that uncanny knack of being able to hear both sides and come up with a compromise and move legislation forward, and that is a real talent. So I am glad to be here with my

colleagues, Mr. Wyche Fowler and Mr. Ed Jenkins. Now, to allow for any additional remarks, I would like to yield the floor to my colleague, Congressman Wyche Fowler for any remarks that he might make.

Mr. FOWLER. Mr. Chairman, I have some brief remarks, but before I make those, let me welcome you to Atlanta.

For those of you who are here, Mr. Pickle, who chairs this very important subcommittee, is not only the moving force behind fairness in this program, but also, as you can imagine, is in great demand all over the country, to come and listen to the very human drama that has resulted from what he described and what I can confirm is an overzealousness on behalf of the administration to save money in a human program, far beyond anything that the Congress anticipated in the reforms that we enacted in 1980.

I would like to say a little more about that and put some figures on the record, but before I do that, all of us, Ed Jenkins, Mr. Pickle, and myself, are especially pleased to have with us this morning, one of our former colleagues, the mayor of this fine city—my predecessor in this congressional seat which I hope I do not hold permanently in trust for him, by wherein he goes, I would love to follow.

I am speaking, of course, of Hon. Andrew Young, the mayor of the city of Atlanta. Mr. Mayor, thank you for coming, and we would be delighted to hear from you in any way that you like.

STATEMENT OF HON. ANDREW YOUNG, MAYOR, ATLANTA, GA.

Mr. YOUNG. Thank you very much, Congressman Fowler, and Chairman Pickle, and Congressman Jenkins. We are really grateful to you for coming to our city and conducting these hearings. We think it is very important, not only from the point of view of this immediate issue, but we are really grateful to the House Ways and Means Committee for being mindful that as we decide how we are going to pay our debt, that the payment not be taken primarily from those who need it most. From our elderly, from our citizens who suffer disabilities, from our poor, and we are very grateful for your sensitivity to the needs of the least of these God's children in our society, and your willingness to stand up in their behalf, so that as we face the enormous debt crisis that the administration leaves us with—some $180 billion—that the budget of the future not be either passed on over to our children's children, nor taken from the needs of the needy, and we are grateful for your confidence and for your trust, and, of course, we in the State of Georgia have to be grateful that we have two members on the Ways and Means Committee.

I don't know of many other States—maybe Texas—but that is the committee that basically decides who gets taxed. It decides how the money is divided up, and I do not think there is any more important committee in dealing with the trillions of dollars that our Federal Government has been entrusted with, and I think, Mr. Chairman, we are pleased that it is in such good hands, and that you will take your time to be concerned about us in Atlanta, and the State of Georgia, and particularly about the people who need the help of the Federal Government the most, and we are very

grateful to you and to Congressman Fowler and Congressman Jenkins, for your aggressiveness and sensitivity on this issue.

Chairman PICKLE. Mayor, we are grateful that you would come to this meeting. You have distinguished yourself in the civil rights field, as a Member of the Congress, as an Ambassador to the United Nations, and now as a mayor of one of the great cities of this country. Your presence here indicates again your continued interest and concern in trying to help those who are least able to help themselves, so you honor us by coming here and we thank you for doing so.

Before you leave, may I yield to my colleague, Mr. Jenkins, for any remarks that he might care to make at this point. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman. It is a pleasure for me to welcome you also to the State of Georgia, and to have the opportunity of sitting on the panel with you and my colleague, Mr. Fowler, on this all important matter. I have been interested in this for some time, simply because before going to the Congress, I had the opportunity to represent many people before ALJ's in social security cases throughout my district. I am very familiar with the procedure. I know the weaknesses that we now find. I, like you, Mr. Chairman, believe that there must be reviews to make sure, first of all, that if people are not disabled, that they are removed from the rolls. I do not believe that we ought to have a meat ax approach that eliminates many people who are disabled and place them in a situation where for months and months and months they are attempting to get a decision and to get an opportunity to have their case finalized, so I join you in supporting the bill that you and Mr. Fowler offered through your subcommittee. I look forward to seeing this bill become law.

I will have other comments later because I think the bill can be strengthened in some ways, but I think it is a good bill and I commend you for these hearings.

Mr. FOWLER. Mr. Chairman, if I may just say one other thing, in light of what you and the mayor and Ed have said. I think we ought to be very clear at the beginning with those here as to the fact that—why we are here, and that is that there is no question that the disability program is nearing a state of total chaos.

The problem, I believe the record will show, stems from the administration's misinterpretation of the law, and as I said before, its overzealous implementation of legislative reforms enacted by the Congress in 1980, Mr. Chairman, to insure that disability benefits were provided only to persons who needed them, and were eligible to receive them.

The continuing disability program that was passed in 1980, estimated savings of $168 million in the fifth year of its operation. The current administration's estmate is 10 times that amount—$1.5 billion. That means over 1 million workers have had their continuing eligibility payments reviewed during the past 3 years, and 45 percent, as a result of that review, have ended in termination, but unfortunately, as the record will clearly show, many of these decisions were made erroneously, and as a result of that, nearly two-thirds of the people who have appealed have had their benefits restored, but only after a very lengthy and costly review process.

Needless to say, this process of review, benefit disruption, and legal review, represents not only a very serious financial, but emotional and physical threat to millions of disabled American citizens and their families.

I have been using facts and figures, but the human costs have been devastating, Mr. Chairman, and that is why we are here. We have legislation, as Chairman Pickle just mentioned to you, that we believe will go a long way, not only to set uniform national standards, but will remedy the inequities in the way the law has been administered.

We are here to document that, and again, Mr. Chairman, as we begin, I thank you for choosing Atlanta as your focal point for the hearing on this very important matter.

[Mr. Fowler submitted the following statement:]

STATEMENT OF HON. WYCHE FOWLER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

I am pleased to welcome my colleagues to Atlanta for this important hearing. I know we all regret the fact that we have to hold this hearing in the first place, but the status of the Continuing Disability Review (CDR) program is of grave concern to us all. We are facing a national problem of crisis proportions, and it requires the urgent attention of Congress and the Administration.

The disability program is nearing a state of total chaos. The problem stems from the Administration's misinterpretation and over-zealous implementation of legislative reforms enacted by Congress in 1980 to ensure that disability benefits were provided only to persons eligible to receive them. Unfortunately, this Administration has seized on these procedures as a way to cut social spending, regardless of the consequences for disabled persons and their families. The effects of this Administration's actions have been devastating and far different from anything Congress ever intended. The continuing disability provision passed in 1980 estimated savings of $168 million in the fifth year of its operation. The current Administration's estimate is ten times that amount—$1.6 billion. Over one million workers have had their continuing eligibility reviewed during the past three years. 45 percent of the cases reviewed end in termination. Unfortunately, many of these decisions are made erroneously, and as a result, nearly two-thirds of those who appeal these terminations have their benefits restored, but only after a lengthy appeals process. This process of review, benefit disruption, and legal review represents a serious financial, emotional, and physical threat to millions of disabled Americans and their families.

I am using facts and figures here but we are really talking about human costs. We are talking about hundreds of thousands of beneficiaries who have been removed from the program without having even the slightest real chance of finding other suitable employment and who have undergone no improvement in the medical conditions that qualified them for the benefits in the first place. And, perhaps more importantly, in terms of human costs, we are talking about the disruption of the lives of people who have worked and earned their disability entitlement.

Many states now find themselves in a position where they feel that they must choose between complying with a federal mandate or following their own good consciences as to what is fair and equitable for their citizens. Georgia currently operates its program in accordance with federal guidelines, but 29 other jurisdictions have taken themselves out of the federal review process altogether either by court order or by their Governor's decree. We must understand that this is a national problem and we have to work together to achieve uniformity and to end the unnecessary suffering and intimidation that many disabled Americans now face when trying to secure the benefits to which they are undeniably entitled.

The Reagan Administration has announced its opposition to any disability reform legislation this year and, quite frankly, I find this position indefensible. It is obvious that the entire Social Security Disability program will soon reach a state of administrative disarray. Legislation is needed to restore order to the process, and to restore public faith and confidence in the program.

H.R. 3755, the Social Security Reform bill, is a responsible solution. It provides real and substantial relief to the thousands of disability beneficiaries undergoing eligibility review, and it gives the Social Security Administration clear and unequivocal statutory standards that must be applied in determinations of disability.

I look forward to the testimony of all our witnesses, and I am sure we will learn today a great deal about the painful human costs of these critical problems.

Chairman PICKLE. Thank you, Mr. Fowler. We have held a hearing in Dallas, Tex., and in Boston, Mass., and we are here today and we are going to Little Rock, Ark., for a hearing tomorrow. I want to say to both of my colleagues that any remarks you may have may be extended and made a part of the record, so if you have additional statements, they will be included in the record.

I think we will proceed now to hear witnesses and move along as quickly as we can. This hearing we hope can be concluded by 1, but it will take us some 3 hours to get all of the testimony.

Again, Mayor, we thank you. You were kind to come and be with us, and we appreciate that, and you are welcome back in Washington City at any time.

Mr. YOUNG. Thank you very much.

Mr. FOWLER. In your official capacity as mayor of Atlanta.

Mr. YOUNG. If I can say something off the record, Mr. Chairman, we hope you will remember we still have to sell a few bonds down here——

[Discussion off the record.]

Chairman PICKLE. We will proceed now with our schedule that has been prepared for us, and I am going to ask before we actually hear from the three witnesses who are already seated at the table, I am going to call on Mr. J. W. Pinkston, the executive director of the Grady Memorial Hospital, who has been kind enough to allow us to use these facilities. Mr. Pinkston, we would be pleased to hear from you at this time on any remarks you care to make.

STATEMENT OF J.W. PINKSTON, JR., EXECUTIVE DIRECTOR, GRADY MEMORIAL HOSPITAL

Mr. PINKSTON. Just a brief word, Congressman Pickle, Congressman Fowler, and Congressman Jenkins, members of the panel and the audience. Grady Hospital is delighted that we have these facilities that are available this morning. That is an easy job for me just to say welcome to you, and that is what I wanted to do, but I did want to do one other thing which is not the subject of this meeting. I do want to thank Congressman Fowler and other members of the Georgia delegation for what they are doing right now to help the medicaid program to see that it continues, and that it is not penalized, and are working with the Governor and other Governors to see that we have a better medicaid program.

That is not the subject of this, but they are working hard at it. We are working with them, and we want to thank you for it at this particular time.

Mr. FOWLER. Thank you very much, Bill.

Chairman PICKLE. We thank you, Mr. Pinkston, and we thank you for the use of these facilities.

Our first panel consists of Thelma Bonner, Hershal Bloodworth, and Arthur Brown. I will recognize them in the order in which they are listed, if that is agreeable to the panel, and we will ask that first Thelma Bonner make such a statement as she would care to make. I do not know if you have a written statement or you are going to give us just oral testimony, but in either event if it is writ-

ten, we will include the entire statement as part of the record, but otherwise we will recognize you individually for such statements you would care to make.

First, Thelma Bonner, we would be pleased to hear from you.

STATEMENT OF THELMA BONNER, ATLANTA, GA.

Ms. BONNER. My name is Thelma Bonner. Due to an accident I had on the job in 1980, I became totally disabled due to a severed right arm and the shock of losing that limb had caused me serious emotional problems and now suffer with a nervous condition. I have also lost 30 percent of the use of my left arm. I attempted to return to work in February 1981 but had to go back into the hospital and learned that I also suffered with a crushed collar bone as a result of the same accident.

I have been in and out of the hospital ever since 1980—approximately seven or eight times.

I applied for social security disability in 1981 and was approved for a closed period of 6 months. I was reviewed following this period.

I was contacted by the Social Security Administration asking me to send them updated medical evidence showing my continued disability, which I did, but was terminated anyway. My checks were stopped in December 1982 but were reinstated in February 1983 due to a provision allowing me to receive benefits until I had a hearing before a law judge. I had a hearing, and the judge ruled that I was still totally disabled and that my benefits should continue.

Since I am unable to work, and cannot earn money to take care of my household expenses, the termination of my disability benefit caused a tremendous financial and emotional hardship.

Any assistance this subcommittee can give me and many others who are totally disabled, would be greatly appreciated since our benefits should not ever be terminated, considering the disabling condition.

I would far rather work and earn a living than to depend on social security disability for my livelihood.

Chairman PICKLE. I think we will receive the statements from the other two witnesses, and then we may have questions, so I will ask next Mr. Hershal Bloodworth of Atlanta, Ga., to proceed.

STATEMENT OF HERSHAL L. BLOODWORTH, ATLANTA, GA.

Mr. BLOODWORTH. Chairman Pickle, Congressman Wyche Fowler, Congressman Jenkins, my name is Hershal Bloodworth. I became disabled in 1968 due to a nervous breakdown I had while serving my country in the U.S. Army. I was hospitalized in the VA hospital and then discharged honorably in August 1968.

I filed my first claim for social security disability benefits with the Social Security Administration and received benefits effective in 1972. I did not file my claim until 1973, and the administration went back 1 year for my disability onset date.

I received a notice from the Social Security Administration that my disability was being reviewed in mid-1982. My benefits were terminated in November 1982.

Since my discharge from the service, my condition, as stated in my medical reports, has not improved. I am on prescribed medication which does help to some degree to control my condition.

My disability was continued after I had a hearing before an administrative law judge who determined that my condition, in fact, had not improved. That decision was made in March 1983.

Due to the ruling that benefits could continue through the hearings level of appeal, my benefits were reinstated in February 1983. I went 2 or 3 months without my diability benefit due to a review process, when my condition not only had not improved, but worsened. The termination of my benefit caused a great deal of depression and stress. This review process, in my opinion, is very unfair to those persons who are and have been totally disabled, who have shown no improvement, and causes more harm than good to the disabled person.

I hope that this subcommittee will take a hard and serious look at the current social security review process and make all necessary changes to prevent this type of review process from ever happening again.

Due to the nature of my disability, the current review process only causes my condition to become more severe.

Chairman PICKLE. Thank you, Mr. Bloodworth. Now we will hear from Mr. Arthur Brown, also of Atlanta, Ga. Mr. Brown.

STATEMENT OF ARTHUR BROWN, JR., ATLANTA, GA.

Mr. BROWN. Yes, sir. I am Arthur Brown. I became disabled in 1965 as a result of fluid around my heart. I was hospitalized from March 1965. I had surgery in June 1965 and was discharged in March 1966.

I filed my disability claim and began to receive social security benefits before my discharge from the hospital.

I was reviewed one other time prior to 1981. The first review resulted in my continued benefit payment. However, my second review in 1981 resulted in the termination of my disability benefit which was also paid to my minor dependents.

At no time did my updated medical evidence reflect any improvement in my condition, but did document several hospitalizations since I became disabled in 1965. I currently and have since 1965 experienced severe periods which has resulted in necessary hospitalization.

When my disability was terminated in 1981, I suffered financially, and experienced a physical and mental hardship due to the lack of funds to meet my necessary expenses. Due to my condition, my medication is very expensive and I had great difficulty in purchasing the prescribed medication which was necessary to sustain my life.

My social security disability benefits were restored as a result of an administrative law judge's decision on October 19, 1982. However, I did not receive my retroactive benefits until January 1983. I went without my disability benefits for over 1 year. This review caused me and my dependents a great deal of stress and hardship that could only be hazardous to my existing condition.

I request from this subcommittee to provide relief to disabled persons such as myself, to reconsider and change the review requirements administered by the Social Security Administration.

Chairman PICKLE. Thank you, Mr. Brown. Now, let me ask some questions of the panel, perhaps each of you. Since you have just testified, Mr. Brown, let me ask you—you were terminated in 1981 or in 1982?

Mr. BROWN. 1981.

Chairman PICKLE. And then you appealed your case?

Mr. BROWN. I did.

Chairman PICKLE. Now did I understand you to say that that review process went on for 1 year?

Mr. BROWN. One year.

Chairman PICKLE. And during that time you were not getting benefits?

Mr. BROWN. Only a small pension from GM.

Chairman PICKLE. But you were not receiving social security benefits, only the other?

Mr. BROWN. I was not receiving social security.

Chairman PICKLE. So then for 1 year, while this case was on appeal, you were without funds or finances?

Mr. BROWN. Very little funds. VA, small pension, and GM, small pension.

Chairman PICKLE. Have your benefits—were they restored?

Mr. BROWN. They were restored in December 1982.

Chairman PICKLE. December 1982—so for 1 year you were without any kind—basically any kind of remuneration?

Mr. BROWN. Right.

Chairman PICKLE. Now, when you received your benefit claim originally, were you classified as being permanently disabled?

Mr. BROWN. At first, no, I was hospitalized, you know, for 1 year, from March 1965 until March 1966. They continued after being discharged from the VA hospital. I went back to work for 6 months and had another breakdown, and reentered the hospital. So my disability did not stop until 1981. From 1965 to 1981.

Chairman PICKLE. Are you working anyplace now?

Mr. BROWN. My condition will not permit it.

Chairman PICKLE. During the year in which you were terminated, were you able to work anyplace, make any money? How did you live?

Mr. BROWN. Off the small pension from General Motors and the small pension from the Veterans' Administration. That is the only way I could exist.

Chairman PICKLE. But you did not work in private industry at all during that period?

Mr. BROWN. Not at all.

Chairman PICKLE. You are not working now—you are receiving benefits?

Mr. BROWN. That is right.

Chairman PICKLE. How old are you now?

Mr. BROWN. Fifty-seven.

Chairman PICKLE. All right, now, Mr. Bloodworth—and I will yield to my colleagues in a minute—Mr. Bloodworth, in your case, your case was a nervous breakdown?

Mr. BLOODWORTH. Yes, Chairman Pickle.

Chairman PICKLE. And that occurred in 1973 I presume?

Mr. BLOODWORTH. 1968.

Chairman PICKLE. Now when did you get your notice that you were going to be removed from disability?

Mr. BLOODWORTH. I think November 1982, yes.

Chairman PICKLE. And then you were terminated that fall, in November 1982?

Mr. BLOODWORTH. Yes, sir.

Chairman PICKLE. Now for the last year, have you been off the disability rolls?

Mr. BLOODWORTH. No; I have been on disability. I was reinstated. I went about a couple of months without my benefits, but I was reinstated.

Chairman PICKLE. And the administrative law judge reinstated your case?

Mr. BLOODWORTH. Reinstated—yes, sir.

Chairman PICKLE. And you are receiving those benefits now?

Mr. BLOODWORTH. I am receiving those benefits now.

Chairman PICKLE. In the meantime, over this period of years, have you been able to hold any kind of work in the private field?

Mr. BLOODWORTH. No; I have not been able to work since 1971. 1971.

Chairman PICKLE. Actually then you were not terminated for more than about 2 or 3 months, and then your benefits were restored?

Mr. BLOODWORTH. My benefits were restored—Congressman Wyche Fowler handled my claim, and it was reinstated in about a couple of months.

Chairman PICKLE. I see. All right, how old are you?

Mr. BLOODWORTH. I am 42 years old.

Chairman PICKLE. And you had your breakdown when you were 32 or thereabouts?

Mr. BLOODWORTH. No, I was not 32. I was right at 26.

Mr. FOWLER. And that was in the Army; was it not?

Mr. BLOODWORTH. It was in the Army; yes, sir.

Chairman PICKLE. I see. Now I am going to yield to either Mr. Fowler or Mr. Jenkins for any questions they may have, and we will recognize you, probably, Ms. Bonner, from the other ones. Let me ask you, Ms. Bonner, you have one arm that had been severed?

Ms. BONNER. Yes, sir.

Chairman PICKLE. Do you have the use of your other arm?

Ms. BONNER. I have about 30 percent of the use of my other arm. They had to go into my collar bone up here about three or four times. I have got a big old hunk of bone sitting up here where the doctor said my bone was crushed when I was in the accident, and they thought it was broken.

Chairman PICKLE. And you cannot use your left arm?

Ms. BONNER. I can use it a little bit.

Chairman PICKLE. In a very limited manner?

Ms. BONNER. Yes, sir.

Chairman PICKLE. But for working purposes it is practically useless?

Ms. BONNER. Yes, sir.

Chairman PICKLE. Now are you receiving benefits now?

Ms. BONNER. Yes, sir.

Chairman PICKLE. So yours are restored?

Ms. BONNER. Yes, sir.

Chairman PICKLE. So in all three cases, you were terminated by a hearing examiner, based on their manual of procedures, but you have had your benefits restored after a period of time. How long were you off before you had your benefits restored

Ms. BONNER. I went off for 1 month—1 month.

Chairman PICKLE. One month, and, Mr. Bloodworth, 2 or 3 months is a very short time. Mr. Brown had his for over 1 year, which shows the very lengthy time in which it takes to have one of these reviews made and finally terminated. I am going to make it plain to this hearing. The purpose of these hearings is—we are not imputing a sense of disconcern or even harshness on the part of the hearing examiners. The hearing examiners in my State and in your State and all across the land I think do a good job. They have a very difficult job because they are operating from a procedure that has been established by the Social Security Administration over a period of years, and they have a manual in which they go down and they have certain rules—if you can lift a certain number of weights, and if you have a blood pressure not over a certain amount, and a few other criteria, and you are able to work.

Those people who hear the cases on appeal do not have to abide by these rules. There is a lack of uniformity between the manual under which the examiners operate and the manual under which the administrative law judges operate. We are trying, through this legislation, to bring both the hearing examiner and the attorney—the administrative law judges in closer conformity with a common rule.

That is to operate by regulation, and once a rule is published and we know what it is, we then have a chance to put it into regulation. Both the examiners and the judges then will be operating from the same set of regulations.

We think that will help a great deal to establish uniformity, so I do not want to impute a sense of meanness or disregard on the part of the examiners. We must be practical about if a person is able to work, and that is the main thing we are trying to establish here, and I now will yield to Mr. Fowler for any questions that he might have at this time, or any other comments with respect to this panel. Mr. Fowler.

Mr. FOWLER. Mr. Brown, now you were working at General Motors' assembly line?

Mr. BROWN. Correct.

Mr. FOWLER. And you were declared permamently disabled?

Mr. BROWN. Correct.

Mr. FOWLER. When your case was reviewed, what kind of work did they tell them you would be able to do?

Mr. BROWN. In the letter that I received, it said that I could lift from 10 to 50 pounds, and I had not been tested. I had only been called by one of their physicians, but no examination on testing my ability to perform work, but the letter stated that I could lift from 10 to 50 pounds, and my condition is so aggravated now that I

could not hardly walk 10 feet without being completely out of breath, so I do not know how they judge that.

If I could go back to work, I would prefer to go back to the job that I left from, but I was unable to do so. General Motors said, "This is all for you."

Mr. FOWLER. And did you hire a lawyer to handle your review?

Mr. BROWN. I did.

Mr. FOWLER. And how much did that cost you?

Mr. BROWN. Twenty-five percent of the total.

Mr. FOWLER. Twenty-five percent of the total benefits that you were able to recover?

Mr. BROWN. Right.

Mr. FOWLER. Which is approximately how much?

Mr. BROWN. Over $4,000.

Mr. FOWLER. Over $4,000?

Mr. BROWN. Yes, sir.

Mr. FOWLER. To be reinstated?

Mr. BROWN. To be reinstated.

Mr. FOWLER. And while you were appealing your termination, were you getting any benefits?

Mr. BROWN. Only from General Motors and the VA.

Mr. FOWLER. Right, but from the Government, from the social security, you were not getting any benefits whatsoever during that over 1 year termination?

Mr. BROWN. For over 1 year, right.

Mr. FOWLER. Ms. Bonner, how did you go about getting help to get your benefits restored?

Ms. BONNER. I called Mr. Fowler's office and——

Mr. FOWLER. Did you have a lawyer before that?

Ms. BONNER. Yes, sir, I got a lawyer. I did not have one before that, but I got one after I talked to someone in your office.

Mr. FOWLER. And how much did that cost you?

Ms. BONNER. $385.

Mr. FOWLER. What was that—approximately a month of your social security benefits?

Ms. BONNER. Yes, sir, a month. Uh-huh.

Mr. FOWLER. And now your benefits have been restored?

Ms. BONNER. Yes, sir.

Mr. FOWLER. And, Mr. Bloodworth, how long were you without benefits?

Mr. BLOODWORTH. Two months, two to three months.

Mr. FOWLER. And did you receive any benefits during that time that you were appealing?

Mr. BLOODWORTH. Yes, sir, I did.

Mr. FOWLER. How much were those?

Mr. BLOODWORTH. It was from my social security.

Mr. FOWLER. Right, but you were able to continue receiving those during that short period of time, during your appeal?

Mr. BLOODWORTH. Yes, sir, I was, right.

Mr. FOWLER. And did you hire a lawyer?

Mr. BLOODWORTH. No, I went through—through your office, through my Congressman.

Mr. FOWLER. Right, you went through your Congressman.

Mr. BLOODWORTH. Yeah, I went through my Congressman.

Mr. FOWLER. How much did that cost you?

Mr. BLOODWORTH. It did not cost me anything.

Mr. FOWLER. Sure am glad to hear that. I yield to Mr. Jenkins. Thank you.

Mr. JENKINS. Ms. Bonner, let me ask you a couple of questions. Your accident occurred in 1980?

Ms. BONNER. Yes, sir.

Mr. JENKINS. And where were you working when you had the accident?

Ms. BONNER. I was working at Kraft Foods.

Mr. JENKINS. On an assembly line?

Ms. BONNER. I was packing margarine on an assembly line.

Mr. JENKINS. What is your age?

Ms. BONNER. Forty-nine.

Mr. JENKINS. Was it at the time you had your automobile accident that you lost your right arm?

Ms. BONNER. It was not an automobile accident.

Mr. JENKINS. An on-the-job accident?

Ms. BONNER. Yes, sir.

Mr. JENKINS. You lost your right arm and half the use of your left arm. Now since 1980, in the last 3 years, you have been in the hospital several times because of this injury?

Ms. BONNER. Yes, sir.

Mr. JENKINS. How many times?

Ms. BONNER. Eight.

Mr. JENKINS. In the last 3 years you have had hospitalizations eight times?

Ms. BONNER. Yes, sir.

Mr. JENKINS. And then you received a letter from social security saying that they were ending your benefits; is that right?

Ms. BONNER. Yes, sir.

Mr. JENKINS. When you received the letter that you were going to be cut off from your social security benefits, had they talked to you at all?

Ms. BONNER. No, sir, they had not talked to me then.

Mr. JENKINS. Had you ever talked to anybody in social security before they cut off your benefits?

Ms. BONNER. Yes, sir; I went down and had them reviewed, to see why was they going to cut it off.

Mr. JENKINS. Before you received the letter, you had not seen anybody from social security?

Ms. BONNER. No, sir; I had not seen anybody and had not heard from anybody either.

Mr. JENKINS. You just got a letter in the mail saying that your benefits were cut off, is that right?

Ms. BONNER. Yes, sir.

Mr. JENKINS. And they had not reexamined you at that time, had they?

Ms. BONNER. No, sir.

Mr. JENKINS. You had one arm missing and half the use of the other one, and yet they told you that you could go back to work?

Ms. BONNER. Yes, sir; they told me I could go back to work.

Mr. JENKINS. They did not ever give you an opportunity at that point to talk to anybody. Is that correct?

Ms. BONNER. Yes.

Mr. JENKINS. Later I assume you had some review. You had an opportunity at some point after you contacted Mr. Fowler's office. Then you finally got a chance to go to a doctor or talk to social security?

Ms. BONNER. I called social security, and they told me that I had to come in, if I wanted to review my case, I had to come in and talk to someone and I got someone to carry me in, and he told me that I had been updated, a medical update, so I told my doctors about it, so they did send it, and so—but I got another letter stating that they was not going to take my doctor's review, you know, for what was wrong with me. They was going to do the panel, the panel of the social security was going to handle it. They had to be the one that said who was supposed to get disability and who was not.

Mr. JENKINS. They sent you to one of their doctors?

Ms. BONNER. They sent me to two of their doctors. They sent me to a psychiatrist and they sent me to a doctor.

Mr. JENKINS. And then after they sent you to those two doctors, they changed their mind and said that you should be reinstated? No, they still didn't do that?

Ms. BONNER. No, sir, they cut me off.

Mr. JENKINS. They cut you off again?

Ms. BONNER. That was the first time they cut me off.

Mr. JENKINS. I see. Did you have a lawyer?

Ms. BONNER. Yes, sir, after I called Mr. Fowler's office.

Mr. JENKINS. So in order to get reinstated, you had to have legal help and it ended up costing you $300 or so to get reinstated?

Ms. BONNER. Yes, sir.

Mr. JENKINS. Thank you, Mr. Chairman.

Chairman PICKLE. I appreciate the testimony of all three of you people, and we are glad to have your statements on the record. We will proceed with the other witnesses, but we hope that you will be able to stay here in the event that we want to ask other questions as we go along, and if you can do that, we would appreciate it very much.

I am pleased in your instances that the benefits have been restored, and I am sorry that it took so long in one case. We are hoping that we can speed up these reviews, and eliminate some of this cruelty that has been taking place. Literally horror stories have resulted from many of these reviews, and they are unnecessary and even cruel, so thank you for coming and making your statements to us.

Chairman PICKLE. Now the Chair will ask Mr. Thomas R. Gaines who is the director of the division of rehabilitation services here for the State and Mr. Mike Foster, representing the National Association of Disability Examiners in Decatur, Ga., if these two individuals will come up to the witness stand if they are here.

Now, Mr. Thomas R. Gaines is the Director of the Division of Rehabilitation Services for the State of Georgia, and Mr. Mike Foster is an examiner and you represent the National Association of Disability Examiners. And you live in Decatur, Ga.

Mr. FOSTER. I live in Atlanta—work in Decatur.

Chairman PICKLE. All right, first we will hear from Mr. Gaines, and I have your written statement. Are you going to submit that statement.

Mr. GAINES. Yes, Mr. Chairman.

Chairman PICKLE. The Chair will recognize you first, Mr. Gaines.

STATEMENT OF THOMAS R. GAINES, DIRECTOR, GEORGIA DIVISION OF REHABILITATION SERVICES

Mr. GAINES. Thank you very much. I doubt very seriously that anything I have to say in my testimony will be original, but I do, nonetheless, appreciate the opportunity to address this honorable subcommittee about a rather vital longstanding need for reform in the current social security disability program.

At the beginning of this testimony, I wish to state my personal endorsement of and support for the reforms presented in H.R. 3755, the social security disability reform bill, also affectionately known as the Pickle bill.

While there are several areas in the current program that I believe could greatly benefit from legislative reform, I will only speak to three during this testimony and the three that I wish to briefly address, include, one, the medical improvement standard, two, uniform disability decision criteria, and, three, continuation of benefits through the full hearing process.

First, I firmly believe that the disability program should have a uniformly applied medical improvement standard. As you are certainly aware, Congressmen, the program currently has no medical improvement standard and I am not alone in the belief that the absence of medical improvement considerations represent an absence of fairness and due process for beneficiaries. Recognition of the absence of due process and fairness has compelled several States, as you know, to develop and implement standards of their own, and has led courts in many other States to design and impose such standards in those States.

What we now refer to as a national disability program is characterized by fragmented and seemingly chaotic practices. The issue of a medical improvement standard and the fact that such variances in practice exist from State to State is but one of several testimonies to the rather fragmented, chaotic conditions of the current disability program. Unfortunately, whether a beneficiary receives fair, due process-based decisions concerning his or her beneficiary status depends to a large extent on where the individual resides. The logical alternative to not having a medical improvement standard, I believe, is to discontinue the continuing disability reviews process [CDR].

Second—the second point I wish to address, the very fact that approximately 60–65 percent of those who have appealed their terminations have had them restored by administrative law judges should clearly tell us that erroneous decisions are currently being made in the current disability determination process. I, among many administrators in the Georgia Division of Rehabilitation Services and our parent agency, the Georgia Department of Human Resources, long ago grew weary of trying to resolve complaints and confusion concerning decisions our disability adjudica-

tion section would make only to see two-thirds of those decisions reversed by administrative law judges.

I am sure you can appreciate the difficulty in trying to explain the discrepancy to locally elected officials, appointed officials, and others interested in the well being of our beneficiary population. Disability examiners and administrative law judges should use precisely the same decision guiding criteria in each case. Because of the ways decisions are made in the current program, we often find ourselves in the ridiculously embarrassing position of encouraging beneficiaries and/or advocates to appeal our decisions because we are reasonably sure an administrative law judge will reverse us.

Third, and the final point I wish to address about reform. I unequivocally support the continuation of benefits through the full appeal and hearings process. It would not be enough in terms of due process and fairness to continue an individual's benefits only through the face-to-face reconsideration procedure. I believe that benefits should not be interrupted at any point in the administrative remedy process.

In closing, I submit the personal observation that the current administration has had 3 years to develop and implement program improving, due process enhancing initiatives. Since March 1981, when the administration invoked the accelerated continuing disability review process and thereby caused substantial hardship to beneficiaries and claimants, and to disability examiners and administrators, the administration has skillfully failed to acknowledge and to help ameliorate the deplorable conditions characteristic of the current disability program.

What the administration is telling us and has been telling us for 3 years is that if reform is to occur, the U.S. Congress will have to do it. I cannot believe that the current administration will direct or otherwise allow the Social Security Administration to undertake meaningful reform steps. Therefore, I respectfully and most sincerely urge Congress to move expeditiously in the passage of H.R. 3755 and to thereby correct what many regard as a major social disgrace in our great country.

Thank you very much.

Chairman PICKLE. Mr. Gaines, I want to add or make some comments in regard to your testimony and then we will come back to questions.

We, the Congress, and this subcommittee particularly, were shocked a couple of months ago when this administration, the Reagan administration, testified in the Senate, that they did not think it was necessary to pass legislation in the disability field, because they had already made enough administrative changes to correct a lot of the discrepancies, and therefore, it was not necessary.

That seems blatantly inaccurate on the face of it, as your testimony—as you testified earlier that many of the States have already removed themselves from the review process. At least 20 States, by court orders, are operating under different guidelines, which the SSA does not recognize which they will not enforce, even though they are court ordered. At least nine other States by their own order have taken themselves out of the program. So today we have some 29 to 30 States who are not under the review process and for

an administration to say that "we have handled this by administration order," that is just not accurate.

That is misleading and it is just not true, so it is necessary for us to try to move forward in this field by passing this legislation which we think will go a long way toward correcting it.

Now, I have other comments to make, but I want to make that plain since you made that as your last point. And we regret we are having to push this legislation. We ought to have been working together. We have worked, for your information, with the administration in the drafting of the bill through the subcommittee and to the full committee. And we have made a lot of concessions and a lot of compromises to reach a general accord, which we had, and then as we went to seek final passage, they testified over at the Senate that they did not need it and then jumped the devil and testified, "we do not need this legislation."

This took the SSA by surprise and like valued soldiers, they remained relatively quiet and accepted it, swallowed hard, but we must bring order out of this chaos and we hope this legislation will.

Well, I wanted to add that to it before we go to the next witness. Now, Mr. Foster, if you would continue with your statement.

STATEMENT OF MICHAEL FOSTER, SOUTHEAST REGIONAL DIRECTOR, NATIONAL ASSOCIATION OF DISABILITY EXAMINERS

Mr. FOSTER. Thank you. On behalf of NADE—the National Association of Disability Examiners—I welcome the opportunity to convey our membership's concerns about the current status of the social security disability program. I am the current southeastern representative to the executive board and represent over 500 members in the southeast region.

NADE is a professional association with a memership of some 2,000 individuals engaged in a wide variety of functions with the disability program. The majority of our members are employed in the State disability determination services adjudicating disability claims for the Social Security Administration. Other members include attorneys, physicians, and psychologists, as well as other involved in all aspects of disability evaluation. Our membershp shares the public's concern with the problems existing in the social security and supplemental security income disability program.

Since the inception of Public Law 96-265, also known as the 1980 disability amendments, there has been considerable outcry from the public due to the accelerated process by which claims were being reviewed and the high percentage of terminations that were being processed.

After the accelerated continuing disability reviews [ACDR] were instituted in 1980, State agency termination rates ranged from 40 to 65 percent and some higher in some months. This was an alarming rate since the GAO study prior to 1980, had indicated that approximately 20 percent, one out of five individuals, receiving disability benefits did not belong on the disability roles. After 1980, however, State agencies were terminating benefits at the approximate rate of one out of every two.

After 1980 we found that administrative law judges were reversing more than 50 percent of Stage agency terminations. State

agency staff were receiving most of the adverse publicity caused by its high termination rate and the subsequent reversals by the administrative law judges.

NADE, concerned about these high termination rates and the high reversal rates, contacted Members of Congress and the Social Security Administration suggesting legislative and administrative reforms.

We welcomed the passage of Public Law 97-455 in January of 1983. This law contained two provisions which afforded relief to those whose disability benefits were being ceased. First it temporarily provided for continuation of benefits through administrative law judge [ALJ] hearings for those individuals terminated and appealing their cases.

Unfortunately this provision has expired and beneficiaries again face loss of benefits during appeal. Two, it provided that an individual be granted the opportunity for a face-to-face evidentiary hearing during reconsideration of the decision that disability had ceased.

NADE believed that these hearings should be conducted by Disability Examiners employed in the State agencies and in October 1983 the Secretary of Health and Human Services, Margaret Heckler, gave the States the option to conduct the hearings beginning in January 1984. All but three States accepted this opportunity and those States that have not opted to perform this function or who have not be granted the option to do so by the Social Security Administration, Federal hearing officers, will conduct the hearings. Although this congressional action did provide some immediate releif, it is still obvious that further legislative action is needed.

NADE believes that a clear medical improvement standard needs to be established. This issue can no longer be left to the courts or the individual States. We believe that a legislative definition of medical improvement is the only way to achieve national uniformity. We believe, however, that a medical improvement standard should take several factors into consideration.

First, advancements in medical or vocational technologies available to the beneficiary; second, error on the face of the evidence in the original favorable decision; third, return to work; and last, evidence demonstrating that the impairment is less severe than originally supposed.

Additionally, NADE has offered two proposals which take into consideration the reliance disabled persons usually place on the benefits they receive, as well as the adverse effect length of time on the rolls plays in attempts to return to the work force.

One, beneficiaries, aged 55 years and older, who have been on the disability rolls for 5 years or longer, should be continued unless there is specific evidence of medical improvement.

Two, beneficiaries aged 50 years and older, who have been on the disability rolls for 10 years or more and who have not demonstrated the ability to perform past work, should be continued.

These provisions would provide equity in evaluation with less harshness than the present system while maintaining the integrity of the disability insurance program. We also recommend that a provision calling for equal reviews of both favorable and unfavorable decisions be included in any legislation passed. Also, there is

an urgent need for legislation to continue payment of benefits through the administrative law judge hearing.

At the present time some States are processing no cessations; some States are recommending cessations only if medical improvement is shown; while other States, processing cases under Federal guidelines, are not considering medical improvement at all. A single definiton of medical improvement applied nationally is essential to achieving uniformity.

Currently, SSA, upon the direction of Secretary Heckler, is reviewing policies and procedures under which disability claims are adjudicated. Also a review of mental disorders as listed impairments is being undertaken, and input has been sought from the American Psychiatric Association and other professionals.

NADE supports a moratorium on all CDR's until SSA completes its total review of policies and procedures, issues national implementation dates with instructions and training for these revised procedures, and until the issue of medical improvement is clarified. We believe such a moratorium should be effectuated immediately and continued until such time as SSA or Congress, provides a single definition of medical improvement, assuring equal treatment to all beneficiaries rgardless of the State of residence. In November 1983 we sent a letter to Patricia Owens, Acting Associate Commissioner for Disability for SSA, stating this position.

NADE does not believe that the Social Security Administration should be required to either apply the decisions of Circuit Courts of Appeal to all beneficiaries residing within that jurisdiction or appeal those decisions to the Supreme Court. The administration's current policy of nonacquiescence in such Court decisions can vary from circuit to circuit. It is not reasonable for a national program to be governed by regional decisions. To require the Secretary to acquiesce or appeal individual court decisions would not promote uniformity in the decisionmaking process. If a policy of acquiescence is followed, even more appeals will result with the actual day-to-day functioning of the program being quagmired as case processing goes forward on an erratic basis awaiting the settlement of injunctions, stays, and decisions.

NADE has long supported the establishment of a Social Security Disability Court. This would solve the problem of acquiescence and would lessen the congestion of appeals in the Federal courts. More importantly, it would create a single body of policy for decisions, binding at all levels of adjudication, and enforcing uniformity. If a legislative solution is sought to this complex problem, the establishment of a Social Security Court offers the most effective alternative.

NADE supports the creation of a permanent advisory council consisting of medical, psychological, and vocational experts to provide the necessary advice and recommendations to the Secretary on disability standards, policies, and procedures. Because we are involved in the day-to-day application of policies and procedures and because our jobs give us a unique understanding of the impact of such policies and procedures on the claimant and beneficiary, as well as on the implementation of the disability program, we believe a representative from NADE should be included on this council.

NADE is concerned about beneficiaries who are no longer assured of equal treatment in various States. Clearly we must take steps, at whatever cost, to insure that we have a uniform national administration of this program.

Recently the Social Security Administration has gone on record indicating that they oppose any disability legislation this year. We do not understand this position. The administration has reported that initiatives already directed, such as the top-to-bottom review of policies and procedures and the implementation of evidentiary hearings will correct the current problem. We applaud these intiatives; however, congressional action is still needed. At least 28 States are now processing cases under different standards. Administrative initiatives are not enough to deal with problems such as this.

There has been some concern that the medical improvement standard will be very costly to the program. We respond to that question with another. Are we losing more defending lawsuits in the courts while presiding over an erosion of public trust? Continuing further, what is the loss in human terms?

Despite the problems which exist, disability examiners remain dedicated to our profession and to improving the disability program. This is manifest from our participation in training programs beyond those which the State and Federal Government provide and our interest in furthering change in the laws under which disability decisions are made. Disability examiners, although frustrated from time to time, have not given up on the program or on the desire for an equitable decision. We support whatever efforts are necessary to make the disability insurance program a sound and a fair one for the disabled. As professionals, we accept these challenges and we accept the changes they bring to the program.

We support your efforts to pass the legislation needed to return equity and uniformity to the disability program. We appreciate the opportunity to present testimony.

Chairman PICKLE. Well, thank you, Mr. Foster. I find that many of the analyses and the recommendations that you have made are included in the bill, H.R. 3755, and in general I presume that you would support that bill?

Mr. FOSTER. Yes, sir, I do support that bill.

Chairman PICKLE. Strong support of it. In order that all of the people here might know, I think we might add to your statement just a little bit before recognizing my colleagues.

There are two key parts of this bill if there are any key parts. One is that we say that there must be medical improvement. That is if a person is put on the disability rolls, before that person is removed it must be shown that that person has been medically improved and that the burden of responsibility primarily would rest with the SSA to show that that is the case that there has been improvement.

Now this is not a blanket exclusion so that once you get on the rolls, you can never be taken off, because the bill clearly provides that benefits still can be terminated if any new evidence shows that the beneficiary has benefited from advances in medical therapy or technology. It also says that benefits can be terminated if new evidence shows that the impairment is less than originally

thought or it can be terminated if there was an error made in the original finding, or if there was evidence of fraud which brought it about.

We are in effect trying to say, that if you are able to work by a reasonable standard, then you ought to be able to work and otherwise you have got to show medical improvement. Now that is a key part of this bill.

Another key part of the bill is we do continue the benefits to the ALJ level, and it is crucial to realize that that law expired in December. Fortunately, the law still says that for the month in which that termination is made, and for 2 additional months, benefits can be received.

Now that reviews have started up again by the SSA as of February that means that between now and May 3 no one can get benefits to the ALJ level unless we, the Congress, have acted. Well, time is of the essence and we must take as speedy action as possible. As I said earlier, I do not think we will have any difficulty in getting this bill through the House, the question is now the other body. And I do not know what your Senator's position is and this hearing is not made for the purpose of causing you to respond to it, but I know that you would want to do that. And I understand that Senator Nunn is very much for this bill and I do not know about Senator——

Mr. FOWLER. I cannot think of his name either.

VOICE. Mattingly.

Chairman PICKLE. But I would hope that you might express yourself to them.

Now I am going to ask you, Mr. Fowler, and Mr. Jenkins, to make additional statements. I appreciate your testimony and I appreciate your support of this measure.

Mr. Jenkins, do you have any questions you want to ask?

Mr. JENKINS. I do want to ask Mr. Foster a question. I know most of the 40 or 50 percent of the cases that have been terminated are ultimately reinstated by the ALJ's. Obviously, that indicates either the State agency or the ALJ's are wrong in a tremendous number of cases.

I am assuming that your association represents the initial disability examiners.

Mr. FOSTER. We represent the line examiners. All professionals involved in the program—we try to.

Mr. JENKINS. Except you do not represent the ALJ's?

Mr. FOSTER. Well——

Mr. JENKINS. All right, the ALJ's reverse your members in 40 to 50 percent of the cases?

Mr. FOSTER. More—two-thirds.

Mr. JENKINS. Why would that happen? Are your people wrong that many times?

Mr. FOSTER. No, we are not. We are right in the high 90 percent of the time, according to the quality review that we are subjected to—the Federal quality review.

Mr. JENKINS. Are you just following policy?

Mr. FOSTER. We are following policy and procedures.

Mr. JENKINS. What we really have today is that you may be disabled under one administration and not disabled under another

simply because of a change in policy, but no change of law. Is that not right?

Mr. FOSTER. I do not know how to respond.

Mr. JENKINS. Well, it appears to me that from administration to administration, when the policies change, even though laws have not changed, and suddenly you find yourself with the same ailments, same disability, but during one period of time you are determined disabled and another time, under the same set of disabilities, you are not disabled.

I do not think disability ought to depend upon whether there is a Republican or a Democratic administration. If a person is disabled, they are disabled. And if they are not disabled, they ought to be removed from the rolls. It is hard for me to understand, very honestly, why 40 or 50 or 60 percent of the terminations are reversed by ALJ's. Somebody is wrong and I do not know who the people are. Mr. Gaines, would you like to comment?

Mr. GAINES. I really would. Thank you. You are hitting on a touchy subject now, and not only that——

Mr. JENKINS. Well, that is the kind I like to touch on.

Mr. GAINES. In a lot of States—when we try to explain to people who are interested, or you know, really looking down our throats about why decisions are reversed like they are and I look at our State's disability determination unit and the pride we take and the quality of our work, it really becomes perplexing. Granted we are using the Social Security Manual of Policy and we are following it to the tee.

Over the last several quarters we have experienced a very high ranking in terms of our proficiency and in terms of the expedition of which we make decisions and process cases, and there is a paradox there. The better the work we do, you might say, because of the current policies and position of the administration, potentially the more harm we do to people who are denied benefits, who are terminated from the rolls.

Mr. FOWLER. Is this the lack of the standards? Will the medical improvement standards in our bill help the problem Mr. Jenkins is addressing?

Mr. GAINES. That plus using the same consistency—using the same criteria for making decisions, Mr. Fowler.

Mr. FOWLER. Does that include applying the Administrative Procedure Act at all levels?

Mr. GAINES. Yes, sir.

Mr. FOWLER. Did you say yes?

Mr. GAINES. Yes, sir.

Mr. FOWLER. What else is necessary to address this problem? Is there anything that we are overlooking?

Chairman PICKLE. Well, let me respond to you on that. All through the bill, we have the provisions that will help allow for better uniformity. The medical improvement, of course, is a very vital part of it. The fact that you can consider multiple impairments, all aspects of a disability, we have got a temporary delay for reviews on mental impairment, mental disabilities.

The qualification of medical professionals, the consultative examinations, all of these things will build up to a common approach. That is why this bill is needed. Now, do you want to add to that?

Mr. FOWLER. No; I would just agree with what you said—confirm that. I think it is just a combination of a lot of things, Congressman, but the single greatest thing—and I guess it ties in a lot of the sections of the bill—is the uniformity.

Mr. JENKINS. I hope we can get; that and once again I want to commend the chairman and Mr. Fowler for working on this and the subcommittee. I do not serve on the subcommittee and they have done a lot of work on this. I may not be asking some questions in the right manner.

Mr. FOWLER. No, the questions—if I might with my friend, Mr. Jenkins—the questions of course are the right ones. Health and disability should not be a partisan issue by any stretch of anybody's imagination. Nobody would argue that it would, and yet the numbers will not go away. The procedures of reform that we thought we adopted in 1980 have been used for a willy-nilly clearing of the disability roles by this administration. Just bamm, the letter comes in the mail.

Now, where you can be helpful to us, and we are seeking your help in our legislation the chairman has been working on this constantly for 3 years with a lot of other people—is there anything in your professional view that is missing besides the uniformity of the standards, improvement of the standards, and the application of the Administrative Procedure Act? Do you see anything that we have overlooked that will lead us to the proper kind of policy in the disability area?

Mr. GAINES. My response would be this: what has evolved through the last 3 years and all of the hard work that Congressman Pickle and the subcommittee has put forth is a fairly comprehensive piece of legislation. It appears to be self-contained; that is, it covers the necessary provisions to insure due process, fairness, uniformity of decision.

Should the House or the Senate elect to remove or alter any of those sections, then I think there are a lot of us who would have concerns about it. My personal support and endorsement of 3755 is as it is.

Mr. JENKINS. Let me ask one question, Mr. Gaines. This has always bothered me.

When people are terminated, they get the letter from the State agency terminating them without ever having a face-to-face meeting with the official. Then they ask for a review, as I understand it, reconsideration on the State level. I have written, or my staff has, on hundreds of cases. I have never seen one of those that has been reversed on the reconsideration level. Is that just a rubberstamp process?

Mr. GAINES. That is not really a rubberstamp process, but at the point that reconsideration is conducted—some of my staff are here and I want to be corrected if I misstate this—the person who made the initial decision does not review the case during the reconsideration process. Another examiner reviews that case, but that examiner is going to use the same information in that reconsideration process.

Mr. JENKINS. It just appears to me that most of them are just affirmed almost automatically. Then when they get up to the ALJ, 60 percent of them are turned around.

Mr. FOSTER. May I respond?

Mr. JENKINS. Yes, sir.

Mr. FOSTER. The reconsideration process, the fact that there are, I think, few reversed decisions shows the kind of tight job we are doing on the initial cessations. And also, if I could clarify one thing: Under the present system, when there is no continuation of benefits, before a person is terminated a social security office conducts a face-to-face interview with them and tells them that their claims are being looked at and that their benefits are being looked at and asks them to provide their medical sources or any medical treatment that they have had, that they would like for us to contact. And we contact all of the sources that they provide—I think sometimes it sounds like this process is more summary than it actually is.

After we obtain the medical evidence and decide that a cessation is indicated and after reviewing all of the facts in the file, the medical facts, the vocational facts, applying the regulations and the laws and the policies, we send that person a predetermination notice that is called a due process letter saying we are proposing to cease your benefits. If you feel like our decision is in error, we would like for you to provide additional statements or additional evidence and you have a specified length of time to do so.

We obtain that additional evidence if they send it. Then we can change our mind at that point and we occasionally do.

Mr. JENKINS. All right, how often do you change your mind at that point? What percentage?

Mr. FOSTER. Infrequently, very infrequently. I do not have an actual data, but we do sometimes at that point change our minds. Then if we do not and we say this is the correct decision we proposed and we send a termination notice, if at that point if they ask for a reconsideration, we again say is your condition worse? Do you have any additional impairments that have not been considered? Do you have any additional treatment that we have not looked at? Again, we obtain medical evidence and obtain statements from the individual about their impairment.

Well, normally—well, I say normally, normal is not the right word, but in a higher percentage of cases we do affirm our original decision because we are looking at essentially the same evidence that we looked at before. We are applying the same standards and guidelines and we apply them correctly within the terms, correctly being the guidelines that we are given to work with.

Mr. JENKINS. It is the guidelines that are wrong.

Mr. FOSTER. The guidelines, whether they are right or wrong, is an issue that is philosophical I think, but the fact that we are operating under one set of standards and the administrative law judges are working under a different set of standards makes it inevitable that there is going to be a large amount of conflict.

Mr. JENKINS. I appreciate your comments and I do not want to prolong this. I just remember a particular case that a constituent of mine had to be fed through the stomach 7 hours a day and he was terminated. And he happened to be in the hospital here in Atlanta at the time and was trying to get to where he could learn to feed himself and stay on this machine for 7 hours a day. When

they terminated him they did not know what to do with him in the hospital because he had no money.

They could not send the machine to his home after they had taught him, because it was very expensive. I just never could understand how reasonable people could come to the determination that a person who had to stay on a machine most of the day, in addition to weighing 85 pounds—he had lost about 100 pounds—how he could possibly be determined able to work under any set of rules.

Finally, it was reversed. Cases like that give people great concern. I just want to thank you for your testimony.

Chairman PICKLE. The chairman would point out that section 202 of the pending bill provides for face-to-face evidentiary hearing at the State agency level by January 1985, and by that same date we would have done away with the reconsideration level, which is largely either being bypassed or rubberstamped. And we think it is more important that the individual be allowed to present his evidence up front, make his case early and not have to wait until 6 to 8 months later on appeal and for the first time get to see eye to eye the judge or the examiner.

We are not going to just say that he has to make his entire case at the beginning, because after we make that determination he will have 30 days to bring in his evidence and get his evidence submitted. We think that will be a very definite improvement and will allow the evidence to be submitted up toward the front.

Now before you leave, I want to make an observation to you. One of you had testified that you had hoped that a representative of the NADE organization be made a member of the Advisory Council. I appreciate the recommendation and if you are not a part of it now, three other groups are, but I will take that under consideration as we go along. It may well be that we ought to have somebody actually in the examination field, also be a part of it.

I have been asked this question from the audience. Would it be possible for anyone in the audience to ask a question. The Chair will allow questions from the audience at the end of a panel and we will ask each person to identify themselves. I must say, though, that we have approximately eight other witnesses here and we must proceed in order to get all of the testimony.

I do not want the hearing to go into a series of questions and answers from the audience to the witnesses to the members here of the panel, but I have been asked would a question—if anybody wants to ask a question from the audience, I would allow that question if you would identify yourself. I have a card here——

Mr. FOWLER. Maybe the question has been dealt with. Anybody want to ask a question of these witnesses at this time?

[No response.]

Chairman PICKLE. Well, if as we go along, if you do, if you would send the question up if you want it asked. We will ask it or if anybody wants to be recognized, we will try to accommodate you as we go along. I am perfectly willing to make that a part of the testimony.

Well, I thank you gentlemen very much. We appreciate your testimony.

The next gentlemen we are going to hear will be Hon. Albert Feldman and Hon. Howard Grossman.

If you two gentlemen will come forward and take your seats at the witness table, we would appreciate it. Mr. Albert Feldman, Judge Feldman, is an administrative law judge at the Office of Hearings and Appeals here in Atlanta, and Mr. Howard Grossman is also administrative law judge, and previously has been with SSA and also with the National Labor Relations Board.

We are glad to have both of you gentlemen here. I will recognize Judge Feldman first and then Judge Grossman, you, for a statement. Do you have prepared statements? I do not have one in front of me, but do you have your prepared statements?

Mr. FELDMAN. Yes; I do. I have submitted 10 copies to the young lady.

Chairman PICKLE. All right, your statement and yours, Judge Grossman, will be included in the testimony in full. I will be glad for you to summarize or to make such comments as you care to make.

STATEMENT OF ALBERT FELDMAN, ADMINISTRATIVE LAW JUDGE, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION

Mr. FELDMAN. Mr. Chairman, members of the committee, my name is Albert Feldman. I am an administrative law judge in the Office of Hearings and Appeals, Social Security Administration.

I wish to emphasize that I am appearing here today at the invitation of the committee and that I speak as an individual and not on behalf of the Social Security Administration.

I have attached several documents to the copy of my statement. Exhibit No. 1 is a paragraph used by some judges in my office which deals with the failure of Social Security to enforce its own regulations and directives. Exhibit No. 2 contains several pages from the operational report of the Office of Hearings and Appeals dated September 30, 1983. This shows the emphasis placed upon management rather than handling cases.

I have omitted exhibits 3, 4, 5, and 7 simply because there is question in my mind as to the Privacy Act, these being papers from files which I am currently handling and I am not sure whether I can submit them or not.

Exhibit No. 6 shows a copy made of the basic manner in which a file was sent to my office for review of a decision upon an Appeals Council remand. I emphasize why we find this abominable. This is the card that was attached. I have placed the claimant's name on it so I can put it back on the file. It says, "targeted Bellmon review reversal," visible to anyone who sees the file.

Mr. FOWLER. What does this mean?

Mr. FELDMAN. This means that this file was to be sent back to a judge who was on what the bureau calls Bellmon review, which is a review of high reversing judges of the Office of Hearings and Appeals.

Incidentally, Mr. Jenkins, the judge to whom the file was sent, was Alfred Quillian, who I am sure you know. This is the type of thing we get. It says "targeted Bellmon review reversal."

Mr. JENKINS. What does that mean? I do not understand that.

Mr. FOWLER. What you are saying—and I will let you speak for yourself—is that it has been determined to be sent to a judge that already has a higher rate of reversal?

Mr. FELDMAN. This is a judge who decided the case. He is the judge who decided the case. It is sent back to him. One hundred percent of his reversals are reviewed.

Not so with many of the other judges in the bureau. The bureau started reviewing only the high reversing judges.

It is a very good way to reduce the reversal rate to tell you the truth, so the judges——

Mr. JENKINS. So the judges then who might reverse are pinpointed by the administration to review those?

Mr. FELDMAN. The judges who do reverse get their cases back with instructions from the Appeals Council.

Mr. JENKINS. A little intimidation there.

Mr. FELDMAN. Yes, sir.

Mr. JENKINS. Are you considered a high reversal judge?

Mr. FELDMAN. I am close to it. I am not one. I am in the sixties instead of the seventies. If I were in the seventies. I would be under review.

Chairman PICKLE. Is this the practice that the bureau follows for all ALJ's? Do they have classifications of the good and bad judges, or the liberal or the conservative judges?

Mr. FELDMAN. Well, we believe they do. We believe they do, and I believe you will find that that was proved in the Association of Administrative Law Judges lawsuit against Social Security.

Chairman PICKLE. Well, I find that interesting that they would so classify the ALJ's and I could understand how that might be if it was just a word of mouth that they passed, "review these," but that is a printed form as a matter of absolute procedure that they automatically put that on your case.

Mr. FELDMAN. On the case I received. Fortunately, I am not on Bellmon Review. They have changed that procedure some and they are now reviewing some of the low reversing judges also, so——

Chairman PICKLE. All right, Judge. We want you to go ahead with your testimony, but before you do, I want to say to the staff, I want them to make further inquiry with the ALJ's as a total throughout other areas, other congressional areas, if this same procedure is being followed as a matter of procedure, or a matter of review, and you give us a report on that. I want to know if this practice is going on throughout the country.

Mr. FELDMAN. It is.

Mr. FOWLER. You do not have to wear a special badge that you reverse, do you?

Mr. FELDMAN. No, sir; we virtually have every type of cessation case. We see claimants who are put on the disability roles by reason of mental impairments and who are subsequently taken off by reason of a physical evaluation with no psychological examination.

In December 1983, one of our judges in the Atlanta office reviewed 15 cessation cases. He reversed 13 of them on the record, scheduled hearings in 2. That is 13 and 2.

Lest there be any question as to whether or not he is a liberal judge, he is historically one of the two least liberal judges in our office, over about the last 6 or 8 years.

The State agency never for themselves obtains either physical capacity evaluations or mental functional capacity evaluations from either attending or consultative physicians. They do obtain these when instructed to do so by an administrative law judge, following the request for hearing.

It should be noted that usually somewhere between 3 and 6 months pass before the administrative law judges have a good opportunity to review the file. Most consultative physicians will tell you that having seen the claimant only once, they are in no position 3 months later to give a physical capacity evaluation as to that claimant. While this may occasionally be done in a psychological or psychiatric evaluation, it is very difficult in other types of evaluations and understandably so.

A constant problem is the number of times claimants who are confined in hospitals and discharged improved are taken off the benefit rolls. They may be discharged from a hospitalization for a condition not connected with the disabling impairment. Such a person put on the rolls for a back condition who goes in the hospital with a broken leg, in many instances of this type, there is no report from a treating physician other than the discharge summary of the hospital record and there is no consultative evaluation.

The administrative law judges and the State agency do not function under the same rules. The administrative law judges attempt to function under the Secretary's regulations.

In addition thereto, to the extent possible, as there is often contradiction between the social security rulings and the Secretary's regulations, we attempt to follow the social security rules. The State agency follows the POMS manual. That is the instructions you all were talking about just a little while ago.

There is no conceivable basis in fact or in law for many of the nonsevere determinations made by the State agency, in my opinion.

I am not a doctor. I am a layman. However, there are some things that are just plain commonsense. Many claimants are taken off by reason of unrealistic physical capacity evaluations by State agency physicians. They must rely upon the written record before them and therefore are subject to the ability of doctors to write a proper report, which ability is not helped by the forms the doctors are sent.

One of the worst things to me is how frequently the State agency will make a determination that a person has a residual functional capacity which is just high enough to allow that person to be declared not disabled by reason of the grid system or able to return to prior work. I got a couple of those in my office right now.

However, with the consultative examination by a board-certified doctor, in a physical capacity evaluation obtained from such consultative examiner, it is quite common for that examiner to present a physical capacities evaluation which shows that that claimant, in the opinion of the doctor selected by the State agency, cannot function at any level of substantial gainful activity.

I suggest that there be written into the law a requirement that no denial of benefits and no termination of benefits be allowed based upon the physical capacity evaluation or mental functional capacity evaluation of the State agency physicians where the same are contrary to the opinions of the attending physicians and consultative physicians. It is strange that we allow doctors who never see the patient to overrule the opinions of the doctors who examine these patients for social security.

I would also suggest to the committee that no cessation be allowed under the law unless there first be a comprehensive medical examination or examinations of all conditions present when the claimant was awarded benefits, together with mental and/or physical functional capacity evaluations by the examining doctors.

Further, I would suggest that such examination include any mental and/or physical impairments which might have arisen in the interim.

I would be remiss in my duty to this committee if I fail to state that this committee should by all means grant relief from the unending pressure placed upon the administrative law judge by the Social Security Administration.

The Association of Administrative Law Judges and Social Security have recently completed a 2 week's trial dealing with these improper pressures to reduce the reversal rate. I will tell you that the pressures are real and the pressures are there and they are shown by the evidence in the record of that case. Unfortunately, I do not have it.

As to the horror stories in social security, I recommend that this committee obtain copies of the report of the hearing before the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs of the U.S. Senate of June 8, 1983, entitled "Social Security Disability Reviews: The Role of the Administrative Law Judge."

I did not have a copy of the legislation before me when I prepared these remarks nor have I seen one since they were prepared. My recollection is that there were one or two small areas with which I disagreed, but that, primarily, I said "Glory Hallelujah."

To me this bill means that the Congress is making an honest effort to give the social security claimants a fair deal. To me this legislation is not a political issue. Rather, it is a matter of simple justice.

I thank you for allowing me to appear. I will be happy to answer any questions at any length which anyone might have.

Chairman PICKLE. Judge Feldman, we thank you for your testimony. I will add that we will include as a part of your testimony, the exhibits that you have attached to your statement.

Mr. FELDMAN. Thank you.

[The prepared statement follows:]

STATEMENT OF ALBERT FELDMAN, ADMINISTRATIVE LAW JUDGE

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I have attached several documents to the copy of my statement. Exhibit 1 is a paragraph used by some Judges in my office which deals with the failure of Social Security to enforce it's own regulations and directives. Exhibit 2 contains several pages from the operational report of the Office of Hearings and Appeals dated September 30, 1983. This shows the emphasis placed upon management rather than handling cases. Exhibit 3 shows a portion of the record in a cessation as do Exhibits 4 and 5. Exhibit 6 shows a copy made of the basic manner in which a file was sent to this office for review of a decision upon an Appeals Council Remand. Exhibit 7 will be explained later. To emphasize for your benefit why we find the tactics of Central Office so abominable in Bellmon Review here is the card which was attached to the file.

We see virtually every type of cessation case. We see claimant's who are put on the disability rolls by reason of mental impairments, and who are subsequently taken off by reason of a physical evaluation with no psychological or psychiatric evaluation.

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The State Agency never obtains either physical capacity evaluations or mental functional capacity evaluations from either attending or consultative physicians. They do obtain these when instructed to do so by Administrative Law Judges following the Request For Hearing. It should be noted that usually somewhere between three and six months pass before the Administrative Law Judges have a good opportunity to review the file.

Most consultative physicians will tell you that having seen the claimant only once they are in no position three months later to give a physical capacity evaluation as to that claimant. While this may occasionally be done in a psychological or psychiatric evaluation it is very difficult in other types of evaluations and understandably so.

A constant problem is the number of times claimants who are confined in hospitals and discharged improved are taken off the benefit rolls. They may be discharged from a hospitalization for a condition not connected with the disabling impairment, such as a person put on for a back condition who goes in with a broken leg. In many instances of this type there is no report from a treating physician other than the discharge summary and the hospital record, and there is no consultative evaluation.

The Administrative Law Judges and the State Agency do not function under the same rules. The Administrative Law Judges attempt to function under the Secretary's Regulations. In addition thereto, to the extent possible, as there is often a contradiction between the Social Security Rulings and the Secretary's Regulations, we attempt to follow the Social Security Rulings. The State Agency follows the POMS manual. There is no conceivable basis in fact or in law for many of the non-severe determinations made by the State Agency, in my opinion. I am not a doctor, I am a layman. However, there are some things that are common sense. Many claimants are taken off by reason of unrealistic physical capacity evaluations by the State Agency physicians. They must rely upon the written record before them and therefore are subject to the ability of doctors to write a proper report, which ability is not helped by the forms the doctors are sent.

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Thank you for allowing me to appear. I will be happy to answer any questions at any length which anyone may have.

Social Security Ruling No. 82-14, Interim Circular No. 139, Regulations 404.1513 and Regulation 416.913 all require that the medical reports include a description of the claimant's ability to function in order for the report to be complete. While it may be impossible for the state agency to obtain these from treating sources, it is certainly within their capacity to insist on these when ordering consultative examinations. The Administration must be held responsible for enforcing it's own regulations and directives. In the instant case the consultative examiner provided no such assessments and to request them now from the consultative examiner after he has most likely forgotten the appearance and other factors concerning the claimant is not viewed as an alternative likely to result in credible evidence. Therefore the Administration having failed to obtain evidence it deems essential in a timely fashion and the claimant having been diagnosed as having conditions which could produce limitations as described by the claimant, the claimant's description of functional capacities is adopted.

Operational Report of the Office of Hearings and Appeals

September 30, 1983

Department of Health and Human Services
Social Security Administration
Office of Hearings and Appeals
SSA Pub. No. 70-032 (1-84)

I. Associate Commissioner's Statement

During the past year, we directed the bulk of our energies toward fully implementing several major initiatives begun during FY 1982. These initiatives were designed to increase our capacity to handle our rapidly increasing workloads, enhance the consistency and quality of our decisionmaking process and improve management practices and techniques.

During FY 1983, we received 363,533 requests for hearing. This is more than a 13.4 percent increase over FY 1982 (320,680). Requests for review before the Appeals Council increased by 36.2 percent over the 68,935 requests received during FY 1982 for a new high of 93,906. During FY 1984 we estimate that the requests for hearing will exceed 337,850 and requests for review before the Appeals Council will exceed 102,630. During the past year we made considerable progress in expanding our capacity to process these growing workloads. This is evident in the steadily increasing number of monthly dispositions made by administrative law judges (ALJs). During September 1983 the ALJs processed an all-time high of 33,923 cases for an average of 45 cases per ALJ. During the same month in 1982, the ALJs processed an average of 36 cases per ALJ. Throughout the year ALJs and their support staff processed 342,998 cases, while the Appeals Council disposed of 93,906 requests for review.

We also made steady progress toward enhancing the quality and consistency of our decisionmaking process. As part of our initiative to ensure adjudicatory consistency among the various adjudicative levels of SSA we developed and issued a series of Social Security Rulings during the year. We also completed our first field training initiative to provide continuing legal education for all the ALJs. We kept on schedule with our training initiatives for improving the quality of work by staff attorneys, hearing analysts and other hearing office support staff.

In addition OHA played a major role in the formation and leadership of several workgroups established by the Commissioner of the Social Security Administration to examine various acute problems in the disability program. The workgroups made significant recommendations in all the major areas of disability to an Executive Steering Committee. Although several of the recommendations overlap proposed legislation, we expect the Steering Committee to advise the Commissioner to implement many of the recommendations early in the next fiscal year.

participates during the hearing to call and question witnesses and otherwise state SSA's position. Five offices were initially selected to implement the project. Although the results thus far are inconclusive, there are some encouraging signs in the areas of consistency and timeliness. Based upon these preliminary findings, OHA has decided to extend the project for at least one year and expand it by adding three to five additional hearing offices. We believe this extension is needed to evaluate fully the potential nationwide effects of the SSA representative.

In May 1983 we completed our first field training initiative to provide continuing legal education to all ALJs. At that time we started work on a second phase of the training which will provide refresher medical instruction. This instruction will focus on body systems which comprise the bulk of case adjudication. We also kept on schedule with our training initiatives for improving the quality of work by staff attorneys, hearing analysts and other hearing office support staff. As in the case with ALJ training, we began work during the year to expand the scope of the training for the field support staff.

Management

During FY 1983 we delivered our national management training program to the remaining seven Regions, which had not received it in FY 1982. This training emphasized management issues such as labor relations, equal opportunity and improved day-to-day management techniques. Both Administrative Law Judges in Charge (ALJICs) as well as Hearing Office Managers (HOMs) participated in the training to ensure consistency between program and administrative management matters in the hearing offices. A similar course was designed and presented to Central Office supervisors during the year.

To improve management techniques and encourage more active management in the operation of hearing offices, we also developed an ALJIC Management Training Program during FY 1983. ALJICs from 28 hearing offices, two Regional Chief Administrative Law Judges (RCALJs) and two Regional Management Officers (RMOs) participated in the pilot session held at the National Judicial College in Reno, Nevada, on September 18-23. A management consultant presented two days of training on basic management principles. OHA personnel then presented two days of job-specific training during which these basic principles were adapted to the hearing office setting. Three additional ALJIC Management Training Conferences are being planned for FY 1984 and one for the first quarter of FY 1985. All ALJICs, RCALJs and RMOs will receive the training.

During the next fiscal year, we hope to install a telecommunications network, which will connect hearing offices, regional offices and Central Office via the new word processing equipment. This network will allow each hearing office to directly input case information onto the SSA case tracking system, rather than mailing case updates to their Regional Office for processing. This will provide faster case retrieval and more timely and accurate management reports. The hub of the network will be a computer recently installed in Central Office. OHA is in the process of procuring the telecommunications modems and testing the software package.

Fourteen additional offices underwent reconfiguration during FY 1983. This brings the total to 62. Under reconfiguration, hearing offices are structured according to functional areas instead of the traditional unit concept, where each ALJ has a small support staff processing only his/her cases. Reconfiguration frees ALJs from the majority of administrative duties, diminishes the impact of staff absences, enables staff to be used more efficiently and improves overall caseflow. Fully reconfigured hearing offices have been able on the average to hear and decide more cases than traditionally structured offices. In order to further improve the performance of reconfigured offices and to allow for the exchange of successful techniques and practices, we convened four Reconfiguration Forums (Arlington, Los Angeles, Kansas City and Atlanta). The Forums stressed the need for stronger office management, improved case control and case tracking procedures and establishment of standard procedures within the office. The creation of supervisory field positions and the introduction of the standardized text and the word processing equipment have facilitated improvements in reconfigured offices. On the average, productivity of reconfigured offices exceeds that of non-reconfigured offices by approximately five dispositions per ALJ per month.

V. Staffing and Budget

OHA is directed by an Associate Commissioner who reports to the Commissioner of SSA. OHA's activities are divided into three major areas: program, management operations and field administration.

The program area encompasses the development of policy and procedural matters within OHA and with other SSA/HHS components, operation of the medical and vocational consultants' programs and the selection of cases for Appeals Council review. Management operations involve administrative functions required for the day-to-day operation of OHA and quality control. Technical assistance in and monitoring of policy, program and procedural matters is provided to the ten Regional Offices and 135 hearing offices by field administration.

During FY 1983, total personnel on duty increased by 4.4 percent over the previous year, which resulted from a 5.2 percent decrease in ALJs, a 4.8 percent increase in field support personnel and a 10.3 percent increase in Central Office staff. The ratio of support staff (staff attorneys, hearing analysts, hearing assistants, hearing clerks, typists and hearing office management personnel) to ALJs increased from 4.3 to 4.8.

During FY 1983 there were no classes conducted for new ALJ hires, since OHA only hired a few ALJs from other Federal agencies. The number of ALJs decreased from 804 in FY 1982 to 771 in FY 1983.

The increase in Central Office staff was due primarily to the hiring of 28 hearing analysts for the Office of Appeals Operations. These analysts were necessary in order to handle the increased case review workload.

Total expenditures increased 19.4 percent over FY 1982 expenditures. As the following table indicates, there was an increase in "Personnel Compensation and Benefits" of over $30.7 million resulting in a 20.8 percent increase over FY 1982. Funds expended under "Other" categories increased 25.3 percent. Included are costs for rental of space for hearing offices, equipment rental and purchase, travel, and contractual services. All of these items continue to be affected by rising prices. Additionally, OHA relied heavily on the use of contractual services for vocational and medical experts.

VII. Litigation

Time Limit Litigation

The most significant development in the time limit litigation area has been the fact that the Supreme Court has agreed to hear arguments in the Leon S. Day case during the October 1983 term of the Court. In that case, the District Court for the District of Vermont imposed time limits for processing requests for reconsideration, hearings, and reviews by the Appeals Council. A definitive decision by the Supreme Court on the constitutionality of judicially imposed time limits for agency action can be expected during FY 1984. One additional time limit litigation case of note is Florence Sierakowski. On April 21, the District Court for the District of Connecticut imposed time limits on the processing of Part A Medicare hearings. This is the first time Medicare hearings have been included in any type of time limit order. The Blankenship case still remains on appeal by the Government before the Sixth Circuit Court of Appeals.

Other Litigation

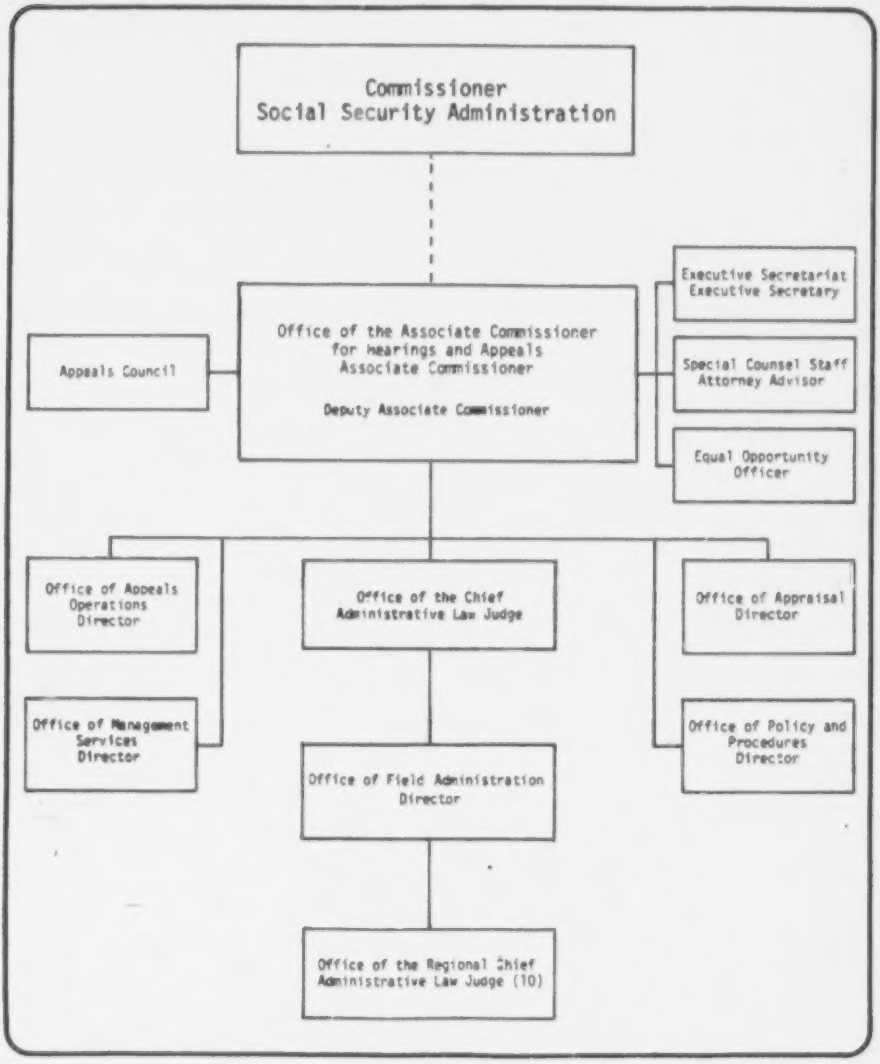
The most significant decision to be issued during FY 1983 was the Supreme Court's unanimous holding in Schweiker v. Campbell which reversed the Second Circuit Court of Appeals and upheld the Secretary's use of the regulatory process to take administrative notice of certain jobs in the economy. This decision finally laid to rest the numerous challenges to the vocational "grid" regulations which were published by the Secretary in an effort to simplify and bring about a greater degree of uniformity in the disability adjudication process.

The major new area of class action litigation during FY 1983 involved challenges to the agency's policy of terminating disability benefits without establishing medical improvement. This issue is being litigated in Massachusetts (Avery), Connecticut (Bedford), Maine (Bowdoin), the Eastern District of New York (City of New York), Maryland (Doe and Seawright), the Northern District of West Virginia (Graham), the Central District of California (Lopez), the Western District of Washington (Morrison), the Northern District of Illinois (Olmo), Idaho (Ramirez), the Southern District of New York (Rice), the Eastern District of California (Scott), the Western District of Washington (Siedlecki), Colorado (Trujillo), and Vermont (Wheeler). In addition there are several class action cases which challenge cessation standards for specific types of impairments, such as, mental illness and heart disease. Other cases of particular interest filed in FY 1983 that are still awaiting a court decision include attempts to enjoin the Social Security Representative Project (Stalling. W.D. VA) and challenges to the OHA 75-mile hearing radius policy (Bolinger, M.D. FL) as well as the medical cessation of claimants in approved vocational rehabilitation programs (Paskel, E.D. PA).

During the October 1983 term of the Supreme Court a ruling is expected on the extent to which Health Care Financing Administration Rulings are binding on OHA's ALJs (Ringer). Also before the Supreme Court on a direct appeal from the Northern District of Alabama is the Robert Mathews case which held that the government pension offset provisions of the Social Security Act were unconstitutional. A stay of judgement has been granted pending the Supreme Court's decision.

Appendix

Organizational Chart



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Chairman PICKLE. You have made some good suggestions and some rather startling observations that we appreciate you making. Before we get into any questions to you, I am going to ask Judge Howard Grossman now if he would proceed.

STATEMENT OF HOWARD I. GROSSMAN, ADMINISTRATIVE LAW JUDGE, NATIONAL LABOR RELATIONS BOARD, FORMERLY IN THE OFFICE OF HEARINGS AND APPEALS, SSA

Mr. GROSSMAN. Thank you very much, sir. My name is Howard I. Grossman. I am a Federal administrative law judge and I was formerly chairman of the legislative committee of the Association of Social Security ALJ's, although I am currently assigned to another agency. I have previously appeared before the subcommittee and it is a great privilege to do so again.

I wish to express general support for H.R. 3755. However, I do not think it goes far enough, in that the basic definition of "disability" should be changed. My reservations concern basic assumptions about illness and disability which are inherent to the Social Security Act and which are not changed by the committee's bill.

The act assumes that a person becomes ill and thereby becomes incapable of gainful work, and therefore receives benefits indefinitely until such time as he is again able to work.

Under this theory there is always some kind of underlying physiological or mental condition which causes the inability to work, and it is the function of the administrative process to determine whether or not this condition is present.

If it is, then under this "diseased" model of disability the claimant's allegations of pain and inability to work may well be credible.

The act does not take cognizance of current medical belief that much chronic illness is a result of environmental influence rather than medical conditions. The physical condition has been corrected or has been alleviated, but the patient still has the same complaint.

The medical profession says that in many of these cases, the patient has unconsciously learned to be sick, in order to continue receiving benefits. This is a process which behavioral psychologists call operant conditioning.

What it means in simple language is that people tend to do things which result in pleasure or rewards and avoid doing things which cause pain or discomfort. When patients continue to appear to be sick after the physical symptoms have disappeared, they are engaging in what is called sick behavior and this behavior has been elicited by a reward, which the individual has received in the past and can expect to receive in the future.

These patients are not necessarily lying. They have been unconsciously conditioned to believe that their original impairment has continued unchanged.

Dr. Stanley L. Chaplan, a psychologist, writes:

> Up until the early 1960's, the treatment of chronic pain was built mainly on the disease model. That model, however, often failed with chronic pain because it could not account for the influences of learning on pain behavior.

The definition of "disability" under the Social Security Act does not recognize these principles. It grants disability benefits indefinitely until some kind of a review shows that the disability no

longer exists. What the act does not contemplate is the fact that the benefits which it grants are themselves agents causing the disability to continue. There is evidence to support this view.

The concept of indefinite benefits was criticized before the subcommittee in 1976, by John H. Miller, an insurance expert. He pointed out the fact that the awarding of disability benefits, which is indefinite in duration, leaves beneficiaries with the inference that a disability pension has been granted.

The psychological impact on the disabled individual of the judgment that his disability is permanent does not set the stage for early recovery or for a serious attempt at rehabilitation.

There is a report of the Society of Actuaries covering over 100,000 claims arising in two types of private disability policies, those paying benefits for only 2 years, and those of indefinite duration.

For individuals covered by the short-term policy, the actual days of disability were a little over 60 percent of those in the long-term policies. From a somewhat different perspective, but with the same result, a federally funded study of rehabilitation showed almost 50 percent greater success with clients who were not receiving benefits as compared to those who were on the rolls.

On the basis of this evidence, it is reasonable to assume that much of the sick behavior of individuals receiving financial benefits of indefinite duration is attributable to those benefits.

Miller's concepts were put into legislative form in 1977 by Congressman Elliott H. Levitas. His bill separated determinations of disability into those which would be expected to end by medical improvement or rehabilitation and those of long and indefinite duration.

Except in the case of indefinite disability, awards required to state both beginning and ending dates, and whether the cessation would be by means of medical recovery or rehabilitation services. The beneficiary had a statutory right to file a new claim prior to cessation and to submit new evidence showing that cessation would not in fact take place.

In the 1979 hearings, Mr. Chairman, you and I had something of a small debate on the record concerning the relative merits of the term grant as opposed to mandatory review. Not surprisingly, Mr. Chairman, your view prevailed, and the mandatory review was enacted in the 1980 amendments.

Is there a difference in behavioral effect between the term grant and mandatory review of an indefinite grant? In an indefinite grant subject to review, the beneficiary perceives only one way to avoid the unpleasant effect of a termination of benefits: by continuing to be sick. If he continues to be sick, he knows that there is no review that can threaten his benefits; he thus learns to be sick, and a grant of indefinite benefits constitutes positive reinforcement of his sick behavior.

In a term grant, however, there are two ways to avoid the unpleasant effect of cessation. The first option is continuation of sick behavior. However, the beneficiary will be less certain about the success of this option because he has already been told that the medical evidence shows he will recover. This verdict given to him

at the time of the initial grant, creates a psychological presumption of recovery.

The fact that he has to overcome this presumption will make proof of continuing disability seem more difficult than proof of the initial disability, and he knows that his benefits will end if he does not prove continuing disability.

A second way of avoiding the unpleasant effect of an end to a term grant is to engage in healthy behavior and go back to work. Although the beneficiary of an indefinite award may also return to work, he does not face the imminent end of benefits.

As in physics, inertia is the controlling principle, and sick behavior induced by benefits of indefinite duration tends to continue.

For these two reasons, therefore, the more difficult job of reestablishing sickness after a term grant has predicted its future cessation, and the second option of avoiding poverty by engaging in healthy behavior, the term grant teaches a return to health, while an indefinite award teaches continuation of sickness.

This reasoning is consistent with the insurance data, with other scientific evidence and with simple commonsense.

Further positive reinforcement of healthy behavior may well be effected by adding an additional provision to the term grant. I have discussed instances in which cessation may not occur by the end of the grant. The claimant then has the opportunity to come in with new evidence. The opposite may also occur. The beneficiary's impairment may improve or rehabilitation may occur prior to the end of a term. However, the fact that the beneficiary has an unpaid balance in a term grant will deter work activity.

Nevertheless, if he is positively reinforced to go to work prior to the end of his term, this will undoubtedly happen in some cases.

I, therefore, propose that the Internal Revenue Code be amended so as to give that individual who returns to substantial gainful activity prior to the end of a term grant of disability benefits, a disability tax credit equal to the total amount of his income during the unexpired portion of the term.

In our society there is no greater incentive to productive activity than the prospect of nontaxable income.

Another amendment in the 1980 act encourages sick behavior. This is the provision which extends the trial work period. This provision has long been part of the act. It allows the disabled individual a period of 9 months in which he may try to return to work, without having his work activity considered proof that he is no longer disabled. What the 1980 amendments did was tack another 15 months onto this period.

Although an individual's benefits cease upon his return to substantial gainful activity after the trial work period, if his earnings drop below the SGA amount during this period, he again becomes entitled to benefits. This encourages failure to exert maximum efforts at gainful activity and leads to a return to sick behavior. By contrast, the term grant is itself the trial period.

Mr. Chairman, what would have been the effect if these provisions had been enacted in 1980? Patients would have been divided into two categories: those hopelessly ill, and those who could be expected to improve medically or learn new skills.

As for the hopelessly ill, there would have been no mandatory review, and the suicide and national despair in the last 3 years would not have taken place.

Persons with remedial impairments would have been told in advance that they were expected to recover, and when their benefits would end, absent new medical evidence which they would have a right to submit prior to the end of their term. They would have received term grants instead of indefinite grants.

Any alleged administrative law judge mistake in such a grant would have been self-correcting within a short period of time, and relatively inexpensive.

It is, therefore, unlikely that the administration would have felt the necessity to interfere with the decisional independence of the ALJs as has just been alleged in a Federal district court, and which I believe will be established.

There would have been no unexpected cutoff of benefits, since the beneficiary knew the ending date all the time. There would have been no congressional necessity to continue benefits through an appeal period, since the payment of benefits would at all times have been coterminous with an adjudicated period of disability.

Nor would the claimant who was denied at the State level face the Hobson's choice of electing appeal, with the danger of recoupment by the Government if the appeal failed. Mr. Chairman, where are these people going to get the money to pay back benefits to the Government? The subcommittee report suggests currently existing hardship exceptions, leniency, and long paybacks. This involves an additional waste of time and money administratively, in solving problems which would never exist under a term grant since there could never be any overpayment in the first place.

On the positive note, persons with remedial impairments would be positively encouraged to recover, learn new skills and go back to work. They would do so in huge numbers and would feel better doing so according to every rehabilitation expert and psychologist who is knowledgeable in the field.

The trust fund would benefit far more from this voluntary effort than it has with the meat-ax approach of throwing dying people out onto the streets. This country, Mr. Chairman, should start paying people for returning to health, rather than compensating them for continuing to be sick.

Thank you, Mr. Chairman.

[The following prepared statement was subsequently received:]

STATEMENT OF HOWARD I. GROSSMAN, ADMINISTRATIVE LAW JUDGE

Good morning, Mr. Chairman and members of the Subcommittee. My name is Howard I. Grossman. I am a Federal Administrative Law Judge, and I was formerly Chairman of the Legislative Committee of the Association of Social Security ALJ's, although I am currently assigned to another agency. I have previously appeared before the Subcommittee, and it is a great privilege to do so again.

I wish to express general support for H.R. 3755. However, I do not think it goes far enough, and that the basic definition of disability should be changed.

My reservations concern basic assumptions about illness and disability which are inherent in the Social Security Act, and which are not changed by the Committee's bill. The Act assumes that a person becomes ill, thereby becomes incapable of gainful work, and therefore receives benefits indefinitely until such time as he is again able to work. Under this theory, there is always some kind of underlying physiological or mental condition which causes the inability to work, and it is the function of

the adjudicative process to determine whether or not this condition is present. If it is, then, under this "disease model" of disability, the claimant's allegations of pain and inability to work may well be credible.

The Act does not take cognizance of current medical belief that much chronic illness is the result of environmental influence rather than medical conditions. The physical condition has been corrected or has been alleviated, but the patient still has the same complaints. The medical profession says that, in many of these cases, the patient has unconsciously learned to be sick, in order to continue receiving benefits. This is a process which the behavioral psychologists call "operant conditioning." What it means in simple language is that people tend to do those things which result in pleasure or rewards, and avoid doing things which cause pain or discomfort. When patients continue to appear to be sick after the physical symptoms have disappeared, they are engaging in what is called sick behavior. This behavior has been elicited by a reward which the individual has received in the past, and can expect to receive in the future. These patients are not necessarily lying—they have been unconsciously conditioned to believe that their original impairment has continued unchanged.

Dr. Stanley L. Chapman, a psychologist, writes as follows:

"Up until the early 1960's, treatment of chronic pain was built mainly on the disease model. According to this model, chronic pain was seen as a symptom of an underlying disease and medical intervention was based mainly on careful assessment of the organic causes of the pain and their removal.

"The disease model often failed with chronic pain because it could not account for the influences of learning on pain behavior. By making patients passively dependent on the medical profession, the disease model unwittingly strengthened their feelings of helplessness and thereby increased pain behavior.

"The learning model, on the other hand, held that chronic pain behavior often could be modified by restructuring a patient's environment to support positive changes, and by teaching the patients methods by which they could increase their functions."

The definition of disability in the Social Security Act does not recognize these principles. It grants disability benefits indefinitely, until some kind of "review" shows that the disability no longer exists. It makes no distinction between a 23 year old motorcycle driver, who had an accident and sustained multiple fractures which are almost certain to heal, and a 59 year old individual with an incurable and disabling disease. Both are given an indefinite grant of benefits. What the Act does not contemplate is the fact that, with respect to individuals with remediable impairments such as the motorcycle driver, the benefits which it grants are themselves agents tending to cause the disability to continue.

The concept of indefinite benefits was criticized before the Subcommittee in 1976 by John H. Miller, an insurance expert. He pointed out that the fact that an award of disability benefits which is indefinite in duration leaves beneficiaries with the inference that a disability pension has been granted. The psychological impact on the disabled individual of the judgment that his disability is permanent does not set the stage for early recovery or for a serious attempt at rehabilitation.

There is evidence from the insurance and rehabilitation fields to support this view. Miller cites a report of the Society of Actuaries covering over 100,000 claims arising in two types of private disability policies—those paying benefits for only two years, and those of indefinite duration. For individuals covered by the short-term policies, the actual days of disability were a little over 60 percent of those in the long-term policies. From a somewhat different perspective, but with the same result, a federally funded study of rehabilitation showed almost 50 percent greater success with clients who were not receiving benefits as compared with those who were on the rolls.

On the basis of this evidence, it is reasonable to assume that much of the sick behavior of individuals receiving financial benefits of indefinite duration is attributable to those benefits. Such behavior is positively reinforced by the benefit system. The beneficiaries unconsciously learn to continue to be sick in order to continue to receive the benefits, long after the disappearance of the physiological lesion.

Miller's concepts were put into legislative form in 1977 by Congressman Elliott H. Levitas (D-Ga.). His bill separated determinations of disability into those which could be expected to end by medical improvement or rehabilitation, and those of long and indefinite duration. Except in the case of indefinite disability, awards were required to state both the beginning and ending dates, and whether the cessation would be by means of medical recovery or rehabilitation services. The beneficiary had a statutory right to file a new claim prior to cessation and to submit new evidence showing that cessation would not in fact take place.

The bill gave the claimant a right to a face to face conference with a decision maker, and required the state agency to investigate all potentially relevant evidence. It also required the state agencies to review annually at least ten percent of their disability allowances on the rolls, selecting for such review cases based on relative likelihood of cessation, such as youthful age, minimal objective evidence of impairment, remediable impairment, above average education, and superior working skills.

The Social Security Administration opposed the bill, arguing that no doctor could be expected to predict when an impairment would end. In response, it was pointed out that only the probability, not the certainty, of cessation was involved, and that this could be based in individual cases on the computerized results of the cessation dates of other individuals of similar ages with similar impairments. As for cessation based on rehabilitation, it is routine for rehabilitation experts to make feasibility determinations. The Social Security Administration also argued that individuals with term grants would flood the system with new applications before expiration of the term grant, and that the adjudication system would break down. This in fact is now taking place, but as the result of enactment of an entirely different concept—the mandatory three-year review.

In the 1979 hearings, Mr. Chairman, you and I had something of a debate on the record concerning the relative merits of the term grant as opposed to mandatory review. Not surprisingly, your view prevailed, and the 3-year review was enacted in 1980.

Is there a difference in behavioral effect between a term grant and mandatory review of an indefinite grant? Any such difference will depend upon the nature of the notification to the beneficiary. Following enactment of the 1980 amendments, the Social Security Administration began informing beneficiaries at the time of the awards that they would be subject to review from time to time. However, when notices of such reviews were sent out, they did not inform the beneficiaries of the significance of the action, and it is fair to infer that the generalized language about the possibility of review in the original grant letters was even more meaningless to the beneficiaries.

Assuming however, that the Administration dramatized the inevitability of review of an indefinite award, the contingencies are different from a term award. In an indefinite grant subject to review, the beneficiary perceives only one way to avoid the unpleasant effect of a termination of benefits—by continuing to be sick. If he continues to be sick, he knows that no review can threaten his benefits. He thus learns to be sick, and the grant of indefinite benefits constitutes positive reinforcement of his sick behavior.

In a term grant, however, there are two ways to avoid the unpleasant effect of a cessation. The first option is continuation of sick behavior. However, the beneficiary will be less certain about the success of this option, since he has already been told that the medical evidence shows he will recover. This verdict, given to him at the time of the initial grant, creates a psychological presumption of recovery. The fact that he has to overcome this presumption will make proof of continuing disability seem more difficult than proof of initial disability. And he knows that his benefits will end if he does not prove continuing disability.

This imposes no greater burden on the disabled beneficiary than he already has under current law. As the Subcommittee report accompanying H.R. 3755 (or, Title IX of the Tax Reform Act of 1983) acknowledges, the Supreme Court has held that the beneficiary has the burden of proving continuing eligibility for benefits. Nor is a term grant inconsistent with the provision in H.R. 3755 that absence of medical improvement creates a presumption of continuing disability. Under a term grant, if the beneficiary proves absence of medical improvement or rehabilitation, his term will be extended, or perhaps converted into an indefinite grant.

Almost every rehabilitation expert would testify—if given an opportunity by the Subcommittee—that a term grant in appropriate circumstances really serves the best interest of the client. It encourages people who *can* get better to do so. If they succeed, and start to engage in gainful activity, their psychological condition is far better than that of individuals who have unconsciously learned to be sick. For these reasons, it is inaccurate to conclude that the term grant imposes some kind of hardship on the beneficiary. Instead, it gives him an opportunity to see whether the medical and rehabilitation prognoses are accurate, and provides a safety net if they are not.

The term grant therefore induces the beneficiary to engage in health behavior and go back to work. Although the beneficiary of an indefinite award may also return to work, he does not face the imminent end of benefits. As in physics, inertia

is the controlling principle, and the sick behavior induced by benefits of indefinite duration tends to continue.

For these reasons, therefore—the more difficult job of re-establishing sickness after a term grant has predicted its future cessation, and the second option of avoiding poverty by engaging in health behavior, the term grant teaches a return to health, while the indefinite award teaches continuation of sickness. This reasoning is consistent with the insurance data, with the other scientific evidence, and with simple, common sense.

Further positive reinforcement of health behavior may be effected by adding an additional provision to the term grant. I have discussed instances in which cessation may not occur by the end of the grant. The opposite may also occur—the beneficiary's impairment may improve, or rehabilitation may occur, prior to the end of the term. However, the fact that the beneficiary still has an unpaid balance in his term grant will deter work activity. Nevertheless, if he is positively reinforced to go to work prior to the end of his term, this will undoubtedly happen in some cases. I therefore propose that the Internal Revenue Code be amended so as to give an individual, who returns to substantial gainful activity prior to the end of a term grant of disability benefits, a disability tax credit equal to the total amount of his income during the unexpired portion of the term. In our society, there is no greater lure to productive activity than the prospect of nontaxable income. It may be argued that the federal treasury cannot stand the loss. Disability benefits were formerly nontaxable, and there would have been no loss under the former rule. Such benefits are partially taxable in 1984 in some circumstances, a recent change which has been criticized as counterproductive. The proposed amendment would, on the contrary, motivate productive activity.

Another amendment in the 1980 Act encourages sick behavior. This is the provision which extends the trial work. This provision has long been a part of the law, and allows to disabled individuals a period of 9 months in which they may try to return to work without having their work activity considered as proof that they are no longer disabled. What the 1980 amendments did was tack on another 15 months to this period. Although an individual's benefits cease upon his return to SGA after trial work period, if his earnings drop below the SGA amount during the 15-month extended period of eligibility, he again becomes entitled to benefits. This encourages failure to exert maximum efforts at gainful activity, and leads to a return to sick behavior. By contrast, the term grant is itself the "trial" period.

Mr. Chairman, what would have been the effect if these provisions had been enacted in 1980? Patients would have been divided into 2 categories—those hopelessly ill, and those who could be expected to improve medically or learn new skills. As for the hopelessly ill, there would have been no mandatory review, and the suicides and national despair of the last 3 years would not have taken place.

Persons with remedial impairments would have been told in advance when they were expected to recover and when their benefits would end, absent new medical evidence. They would have received term grants instead of indefinite grants. Any alleged "mistake" in such a grant would have been self-correcting within a short period of time, and it is unlikely that the Administration would have felt the necessity to interfere with the decisional independence of the ALJs, as has been alleged in a federal district court proceeding.

There would have been no unexpected cutoff of benefits, since the beneficiary knew the ending date all the time. There would have been no Congressional necessity to continue benefits through an appeal period, since the payment of benefits would at all times have been coterminous with an adjudicated period of disability. Nor would the claimant who was denied at the State level have faced the Hobson's choice of electing appeal, with the danger of "recoupment" by the government if the appeal failed. Mr. Chairman, where are these people going to get the money to pay back benefits to the government? The Subcommittee report suggests currently existing hardship exceptions from recoupment, leniency, and long paybacks. This involves additional waste of time and money solving problems which would never exist under a term grant, since there could never be an overpayment in the first place. It is provisions like this that have made administration of the federal disability program a procedural nightmare.

Under a term grant, persons with remedial impairments would be positively encouraged to recover, learn new skills, and go back to work. They would do so in huge numbers, and would feel better doing so. The trust fund would benefit far more from this voluntary effort than it has from the meat-axe approach of throwing dying people out on the streets. This country should start paying people for returning to health, rather than compensating them for continuing to be sick.

I thank the Subcommittee for this opportunity to give testimony.

Chairman PICKLE. We thank you, Judge, and I would emphasize that I will look forward to your written testimony to our committee, so that we can review again the very strong statement you have made. Judge Grossman was recommended for our subcommittee's consideration 2 years ago, and I believe by Congressman Levitas, and we have had a chance to visit with him on occasion, and I know your strong feelings.

Let me say to you that our bill does not contain all of the approaches you recommend. We are having a difficult time just to get a sensible bill through—instead of one that would revamp the entire program. These continuing reviews that are being oriented have been mishandled by the administration. The law that the Congress passed that required a review every 3 years was not to include those who are permanently disabled. They were not to have been brought in, and all others in effect would be considered as term decisions, and they should be understood that they will be subject to review.

Now it may be that you can more clearly designate a specific period of time of a grant of a certain period, but we are trying to make it understood, that if you are not permanently disabled, that you will be subject to review in 3 years—perhaps it could be 4 years, or some given time, and we ought to also strive for a better definition of what is disability.

We are also making some corrections in our bill with respect to the benefits for persons in the rehabilitation program, because one section of it repeals the requirement where there is a medical recovery, that a disabled beneficiary must perform 9 months of SGA to require for vocational rehabilitation provided for reimbursement. We are trying to not stick to that strict 9 months SGA as you have made reference to.

I do not know that we can go as far as you have listed, or you have suggested. Obviously we have not, but the recommendations that you have made as one in the field—you hear these cases over and over, and you are an expert in the consideration of these kinds of cases, has meaning to us, so we appreciate your coming here, and I look forward to reading your testimony again, because you are very forthright in your recommendations.

First, Judge Feldman, let me ask you a question. When you said that we are having these terrible pressures applied to ALJ's, could you be more specific. What kind of pressures are you talking about when you say "pressures against ALJ's"? Now you have made some reference to the little printed tab that is put on the cases referred to you. What pressures are your talking about other than what you have mentioned.

Mr. FELDMAN. We have had a training session within the last two years which was devoted primarily to how to lower your reversals. There was about 2 hours devoted to reversing cases and about 2 days devoted to affirming cases.

Chairman PICKLE. Were these——

Mr. FELDMAN. This was by central office.

Chairman PICKLE. Was this review—this study you were talking about—was that conducted by the Bureau of Appeals of the Social Security Administration?

Mr. FELDMAN. The training session was conducted by the Bureau of Hearings and Appeals, and Lou Hayes, the Associate Commissioner, was present.

Chairman PICKLE. And the subject matter was how to lower——

Mr. FELDMAN. The subject matter was slightly disguised, slightly disguised. What was referred to in our last training session, and the language "there will be no hidden agenda in this session."

Chairman PICKLE. No hidden what?

Mr. FELDMAN. "No hidden agenda in this session," but the pressures are there. I gave the information as to who to see to possibly obtain copies of the exhibits from the judges' lawsuit, because the judges' lawsuit is based upon the attempts by the administration to reduce the reversing rate, and we proved it.

Chairman PICKLE. Now do either of you judges feel that we should not have a review periodically—some reasonable periodic time, for those who have been adjudicated to be disabled?

Mr. FELDMAN. Absolutely not. We make mistakes just like everybody else does. The State agency makes mistakes, too. Everyone makes mistakes. Everyone's work should be reviewed, but it should be reviewed with an honest approach, instead of an approach of taking people off the rolls.

Chairman PICKLE. You are saying then that the review is proper, but it ought not to be for the purpose of removing someone, but to determine if they are able to work.

Mr. FELDMAN. That is correct—that is correct.

Chairman PICKLE. Judge, do you agree with that?

Mr. GROSSMAN. I believe that no public servant is exempt from scrutiny. Of course, the higher the public office, the higher the scrutiny, and I believe that administrative law judges like all other public servants, should have their decisions reviewed.

However, if we are talking about review of a determination of disability, then I would stand on my statement. As for persons who have remediable impairments, they do not receive a review. They receive a term grant. In effect, the review is given at the time of the initial grant. They are told at the end of 2 years or 3 years or 18 months, unless you prove to the contrary prior to the end of that time, your period of disability is coming to an end.

This would not be the case with respect to individuals who have impairments of long and indefinite duration. Now the 1980 amendments provided that in such cases, which it called permanent impairments, that review will be under such circumstances as the Secretary would decide, and certainly with respect to persons who are hopelessly—perhaps terminally ill, I do not think that we should say that they are completely exempt from review. However, that is not something that is as vital as is the case with persons who have remediable impairments.

Chairman PICKLE. Well, the bill that we have does not put a moratorium on all mental impairment cases—we make it broader in order to get a better analysis of this entire approach.

Mr. Fowler, do you have a question for these ALJ's?

Mr. FOWLER. Judge Grossman, I also would like to see the details of your approach, and we are always searching for new ideas and better ideas, and hopefully even when it is not a Presidential election year. Just briefly, would you anticipate the changes that you

recommend going to a term grant and the review system that you have described, could result in fewer personnel in the process—a small bureaucracy, or would it not take many more people to have these two separate categories, and I assume switching the burden of proof to an individual to prove that they could work? Has your study gone that far to look at the whole structural changes that would be necessitated if we went to that approach?

Mr. GROSSMAN. First, the evidence as to predictability of cessation of a particular impairment. It is my belief, sir, that in the archives of the Social Security Administration you have studies of the predictability of cessation of certain kinds of impairments by diagnosis. In your office now is a copy of a speech which I made to the American Pain Society in Chicago last fall and attached to it is a copy of a letter to me from Mr. John Miller, who cites the details of the Social Security Administration studies. I refer you to that letter in your office now, sir. There is also a letter from Senator Carl Levin, about this approach.

With respect to additional personnel, no, I do not think so, sir, once the statistical studies have been prepared. And by statistical study I mean this—an individual, age 38, education 10 years, work history, such and such, with a combination of impairments—emphysema, mild heart condition. The statistics indicate that such a person either will or will not recover, or that 80 percent of such persons will recover in a period of 18 months, 20 months, 22 months. With this data in hand, the Secretary could prepare regulations which would indicate when it is—the probable date that recovery would take.

The ALJ or the State disability examiner would then utilize these regulations for the purpose of determining when this probable date, and I underline probable date, probable date will take place. We would not then, in my opinion, have the necessity of a great additional number of people required to implement this. What would be required is a rather considerable statistical study utilizing the information that the Social Security Administration has.

Mr. FOWLER. In other words, what do you anticipate would be the standards of proof that the individual facing the end of his 18 month term grant would have to show and to whom, and how much, in order to show that the actuaries are wrong—that what was anticipated to be an 18 months' disability is in fact permanent?

Mr. GROSSMAN. OK. We would simply have to come in with new evidence showing that the predicted, for example, mending of his bones, as a result of a breakage which occurred during a motorcycle accident, or his ability to learn a new skill because he had a relatively high IQ, simply had not taken place. He has the burden of establishing disability to begin with. He would have no more the second time around. He would have to reestablish his continuing right to entitlement. This imposes no great burden on him, any more than it does—than it did in the initial instance, sir.

In the meantime, those whose impairments was—are remediable, would be encouraged——

Mr. FOWLER. I undertand that. I know this is hard, but while they are talking—you have given a lot of thought to an alternative

system, but what about the present system. If we are going to continue the present system, do you have any recommendations as to how it might be improved based on your experience as an administrative law judge?

Mr. GROSSMAN. I would entirely support the principles of the bill which the committee is now advocating.

Mr. FOWLER. We are heading in the right direction?

Mr. GROSSMAN. Oh, yes, if you are going to continue with the present definition of disability, as a grant of indefinite benefits, then, of course, I am entirely in accord with the principles of the bill, and I entirely subscribe to the statements made to the committee by Judge Feldman. I think there has been enormous pressure on the administration to compel administrative law judges to deny the benefits.

When I was with the Social Security Administration it was quite apparent to me that this was going to take place—in 1975, I wrote a document which was subtitled "The Attack on the Judges." I predicted this was going to take place, and it has taken place I am sorry to say.

Chairman PICKLE. Let me interrupt to say that the administration has attempted to change their definition of "disability," and instead of having a 100-percent review under their guidelines now, they have expanded the definition to change it, to approximately 40 percent of the people—are my figures correct on that? I do not know—a larger number is not being reviewed now under their administrative rules, which is a recognition that they are trying to really review those cases that they think should be reviewed, rather than just a blanket review.

That is their answer to more equity in the case, rather than to put it in writing. It may be that we will have to seek a clearer definition of "disability." It is difficult to establish sometimes. I am advised. I am not an attorney, but I can see why it is difficult, because quite often, it is the question of whether the person is disabled or not, it is such an objective decision, that it is difficult to know who is right and who is wrong.

Mr. GROSSMAN. Going back to Congressman Fowler's question to me about administrative personnel required, in my opinion the term grant under the procedures I recommended would be far less administratively chaotic than under the present circumstances.

Let us analogize, gentlemen, to a situation—there are two grocers, each of which is selling apples. The first grocer has a barrel of apples and these contain good apples and bad apples, the bad apples being cases which should never have been in there in the first place. Under the present system, the administration continues to go through this barrel of apples, the grocer doing that over and over again, spending a good bit of his time, attempting to detect error.

The second grocer has read the behavioral psychologists, and Mr. Miller's ideas and Congressman Levitas' bill, and he has several barrels. First of all he has a barrel which is cases which are of indefinite or longstanding duration. He pours all of these apples into this barrel and he never bothers to consider them at all.

The second barrel also has apples, and there are tubes in the barrel—some labeled 6 months, 12 months, 18 months, 24 months.

He puts the apples in each one of these tubes according to its classification, and he stops worrying about it, because if he made a mistake—and that seems to be the administration's great concern, mistakes—the mistake is self-correcting, within a period of 6 months, 9 months, 12 months, or 18 months. You do not have to do as does the first grocer, continue to scrounge through the entire barrel continuously trying to find rotten apples, and, therefore, I think it would be much more efficient to have this kind of a system.

Mr. FOWLER. Well, I think there is a lot of philosophical merit to what you say, Judge Grossman. I am sure—not being an expert in the field, that there is much psychological testimony with people who deal with this all of the time, that back up your contentions that we want to give people incentives to good health, and not a lifetime grant for remaining ill, but that is part of the political philosophy—if I can just talk off the top of my head for a moment.

There is an attitude among some people that is always "physician heal thyself". Sickness is simply an attitude. "You are not really sick—just malingering." And that human dimension, which I guess is a philosophy toward illness, always gets pervasive, in one sense of the word, in bureaucratic decisions. It is individuals judging individuals. I would like to see a way that we could determine what you have referred to as the hopelessly ill and then set them aside, but I am concerned about your other barrel of apples, whereby it has been determined that a person should be well in 18 months, because we have these wonderful actuarial tables—like economist. These tables look wonderful on paper, but there is no way to pick out that 20 percent that does not fit the actuarial tables, and what you are now doing is putting the burden on that 20 percent, it would seem to me, to go out and get an array of doctors and show that they can pick up 50 pounds and go through all of this testing system to prove that they are not disabled.

That is a hard burden for an awful lot of people who are disabled, and I am not dismissing it by any stretch. It is sort of like the tax system. It would be wonderful to go to a flat tax from a progressive income tax if you could figure out how to flip it, and what I would like to see is further substantiation of how you went to your system without losing thousands of people right now through the cracks.

Mr. GROSSMAN. The method which I recommend to the Congressmen is the subject of the application of varying types of political philosophies, and that would be the Secretary's right to determine the percentage rate of individual who are recovered, by which percentage rate it will be determined that a particular individual will recover.

For example——

Mr. FOWLER. No, I understand that—the only reason I am interrupting you is I think we probably must go on. I know we have what you have written to me, and I will promise you a thorough review of it.

Mr. GROSSMAN. Thank you.

Chairman PICKLE. Mr. Jenkins.

Mr. JENKINS. Mr. Chairman, I do not intend to ask any questions because I know time is limited, but I do want to thank the panel

for being here. Judge Feldman, I especially appreciate your testimony because I understand the pressures of ALJ's now from this particular administration. Your testimony is fortified by a letter that I received yesterday from another ALJ who happens to be in Illinois. Judge Thornton, I believe. He says, in a rather detailed letter to me, that management has reacted, and he is speaking of Social Security, with initiatives designed to bring the administrative law judges in line.

Then he quotes from a response from Social Security Acting Administrator, and I am quoting her now from this letter:

> The administrative law judges' authority to decide cases is delegated to them from the Secretary and, therefore, they must follow the Secretary's policies in making those decisions.

I understand the pressures that you are under, but I want to say that I appreciate the independence, the integrity of the ALJ's that I am familiar with, and I think you are doing a good job. I thank you for your testimony.

Mr. FELDMAN. Thank you. Mr. Chairman, could I add one additional thing?

Mr. PICKLE. Judge Feldman.

Mr. FELDMAN. I know of no judge who is unwilling to have 100 percent of his cases reviewed so long as it is a random selection, and he is not a targeted judge. So long as they are not shooting at him. If it is done on a random selection basis, I know of no one who is concerned about being reviewed.

Mr. FOWLER. Which is not the case now.

Mr. FELDMAN. Which is not the case now.

Chairman PICKLE. I can understand your feeling, and we will relay that on to the Bureau and I know they will be glad to hear your views. Well, thank you gentlemen, very much. You have been very helpful. We appreciate it.

Now the Chair will ask Mr. Ken Levin and Mr. Larry Gordon to take their seats at the witness table, then we will have a panel that follows, consisting of three other persons, and we will try to move along as quickly as we can. I think we can finish our testimony here before one, so we will proceed as quickly as we can, but we do not want to cut anybody off.

Mr. Ken Levin represents the Atlanta Legal Aid group here in Atlanta, Ga., and Mr. Larry Gordon represents the Affleck & Associates in Decatur, Ga., and I presume in Atlanta, too?

Mr. GORDON. Both.

Mr. FOWLER. Wherever their clients come from.

Chairman PICKLE. So I would like to ask Mr. Levin to proceed. Do you have a written statement?

Mr. LEVIN. I have a written statement, Mr. Chairman, but half of it is in the typewriter, and the other half is out, and if we are lucky, it will be here——

Chairman PICKLE. You and Judge Grossman can get together then on the preparation of your testimony. If you will proceed and make your statements, and in both cases we will make the entire statement part of the record.

STATEMENT OF KENNETH G. LEVIN, DIRECTOR OF LITIGATION, ATLANTA LEGAL AID SOCIETY, INC.

Mr. LEVIN. Thank you.

Chairman Pickle, members of the subcommittee, as indicated my name is Kenneth Levin, and I am appearing at the request of Congressman Fowler concerning this bill, representing the Atlanta Legal Aid Society. The Atlanta Legal Aid Society is a Legal Services Corporation-funded organization, which provides civil legal services to very poor residents of the Atlanta metropolitan area.

Our clients include many recipients of social security and SSI disability benefits, and I personally have represented several hundred such clients at all levels of the administrative and judicial appeals process over a period of approximately 14 years.

Atlanta Legal Aid and our clients are gratified by the committee's concern that Social Security deal fairly with them, and concur with the committee's identification of a number of impediments to that goal under the present administration.

The problems with the social security disability adjudication process, and of course their solutions, and far too complicated to be dealt with in the brief time I have been allotted today, so as we just discussed, I put together a long submission—necessarily long written submission that I hope will be here in the course of today, for inclusion in the record.

As I only had 2 days to put it together, it is a good example of the remarks that someone made, that "If I had more time it would have been shorter," but nevertheless, we are well aware already of many of the problems that the committee has already identified, and I want to focus on the highlights of the written submission.

We have identified five problem areas in the existing process that we believe to be systemic rather than isolated problems limited to specific cases or individual exceptions to a properly functioning overall process.

They are, first, serious deficiencies in the evaluation at all levels of claims based on mental or psychological disabilities. These include not only mental illness, as the term is commonly understood, but also treatments of complaints of pain, since pain is itself primarily a mental problem. Also alcoholism, drug abuse or drug addiction.

The second problem is reliance by the Social Security Administration on the reports of certain consultative physicians. That is, those physicians hired by Social Security to do one-time evaluations on the claimants' medical condition.

The third problem involves those States—and I believe that's the majority of the United States, and that would include Georgia—in which the Secretary of Health and Human Services does not make the disability decision at the first two administrative levels of the four—that is, the initial application and the reconsideration level—but has delegated that authority to a State agency in Georgia, that is, the disability determination unit of the Department of Human Resources.

Because of apparent unfamiliarity with the disability standards and heavy reliance on brief opinions of doctors who have never ex-

amined the claimants, these determinations often produce very unfair and inequitable results for claimants at those levels.

The fourth problem is the improper use contrary to the Secretary's old regulations, of shortcuts to resolutions of disability claims. One is the improper use of the so-called grid regulations in place of vocational testimony in cases involving significant non-exertional impairments, and second is the denial of claims solely on medical grounds, without consideration of age, education and work experience on the basis the medical problems are supposedly not severe, and finally determination of existing benefits payments on reevaluations in accordance with what the committee has been hearing about earlier, without giving any consideration to the fact that Social Security has previously decided in the claimant's favor on the same issue, the so-called medical improvement standard question.

Speaking to those five areas in turn, first, mental impairment. People with mental disabilities, as I am sure the committee knows, have a hard time of it from very many quarters. Unfortunately, social security is sometimes no exception to the rule. We think there may be three reasons.

First, mental illness affects behavior rather than physical functions, and too many people retain the unspoken and sometimes unconscious notion that they can and should control their own behavior.

Second, mental impairments are intangible and invisible compared with physical problems, therefore, they sometimes seem less real and, to some people, more subject to faking than physical ones do.

Third, the medical profession itself, as well as lay people, have less understanding of the causes and cures of mental illness than most physical illnesses, so the standards for judging are not always as clear as they are with physical illnesses. The net result of this is that mental impairment claims are sometimes dismissed as all in your head or as made up by some people. These observations apply equally to the better known psychoses and neuroses, and to pain and alcoholism and drug addiction.

We have given in our written statement some quite remarkable case examples of situations in which these factors, or some of them, have operated to the detriment of severely mentally ill claimants.

We think that the committee's provision for exploring better ways to evaluate pain is an excellent idea, and we also agree with the need to promulgate more precise and understandable criteria to evaluate mental impairments in general.

However, as we have explained in the written statement, we do not feel that the greatest need for this is in the listing of impairments, which is what the bill provides for. The listing of impairments covers illnesses, mental and otherwise, that are only at such a serious level that they can support a summary grant of benefits without consideration of individual age, education and work experience.

In our perception, the need for better mental impairment standards is much greater for people whose illness is not so serious so as to totally disable anyone who had it, but at the level where in combination with advanced age, limited education or unskilled work

experience, it precludes the particular claimant from doing any kind of gainful work within his capabilities.

One concrete suggestion we have made in the written submission is much greater reliance on what is known as DSM-3. It is the "Diagnostic and Statistical Manual of Mental Disorders," third edition, which is now used by all American psychiatrist and psychologists. It's the official publication of the American Psychiatric Association and it gives great detail as to all known mental illnesses. Although it is relied on in the profession almost universally, you hardly ever see it relied on in social security cases.

The second problem we have identified involves consultative medical examinations. Social security is authorized to purchase medical evaluations in the private sector for evidence concerning a claimant's condition. Some physicians who perform these examinations are well qualified, and conscientious, and provide a useful service to most of the claimants and to the Government, but others are basically what we would call evaluation mills, doing most or all of their business in these kinds of one-time evaluations, rather than in patient treatment.

This situation may lead to rushed or perfunctory assessments with a premium on quantity rather than on quality, and with a tendency to give recommendations that benefits be denied, so as to retain social security business on the theory, right or wrong, that the social security wants to hear negative evaluations so that they can save money by denying benefits.

We hope the committee will investigate how these evaluation mills can be eliminated. We have made a couple of suggestions in the written material.

The third problem is with at least some State disability determination units. Disability determinations at the application and reconsideration level for social security purposes are now made in most States, including Georgia, not by social security, but by State agencies, here the disability determination unit.

We understand that these do excellent jobs in some States, but we feel that there are some real problems in Georgia. They include, at least first, an apparent unfamiliarity within the disability determination unit, both by the people who make the decisions and by the employee doctors who make the recommendations, with the social security disability standards, partly because the disability determination units do not use the controlling social security regulations, but rather their own handbook which may not accurately state what those standards are.

Some examples of this, again, appear in the written testimony.

Second, the disability determination units usually rely almost totally on brief handwritten opinions by State employee doctors who have never seen the claimant, and are simply offering conclusive opinions about reports of doctors in the record who have seen the claimants.

Because these employees, physicians, are insulated both from claimants and from the officials who make the decision, their opinions, at least in this State, tend to be of very poor quality. We propose that these nonexamining medical reports be eliminated altogether and that the handbook that the agency use to tell them

what guidelines to apply to disability determinations be replaced by the Secretary's regulations themselves.

We suggest that this is particularly appropriate now because under President Carter's operation commonsense program, the social security regulations were rewritten from legal language to lay ordinary language and should be able to be comprehended now by State agency decisionmakers.

The fourth problem involves shortcuts to decisions. The Social Security Act requires that claims be individually determined on the basis of the claimant's medical condition, age, education, and work experience. However, the U.S. Supreme Court recently ruled that within strict limitations, a table, commonly known as the grid, can be used in lieu of vocational testimony.

When it is used, the evaluator simply plugs the age, education, and residual functional capacity of the claimant into the appropriate slot in the table and he comes out with a directed conclusion either of disabled or not disabled.

The problem is that although the regulations do now, and always have, limited the use of the grid to cases involving only exertional impairments, which would exclude such things as mental illness, pain, environmental impairments, postural impairments, skin conditions, seeing and hearing problems, and so forth, nevertheless social security continues to use the grid regulations in cases where there are significant nonexertional impairments, even in violation of their own regulations.

A related problem lies elsewhere in what the Secretary calls the sequential evaluation process, and that process, as presently written, allows what should be a very few clear cases to be denied without consideration of age, education, and work experience if the medical conditions are so insignificant that it's clear that they make little or no difference to the claimant's ability to work.

The regulations have always provided, again, that such use is to be very limited, but the regulatory terms of those cases, that is the people with nonsevere impairments, is very misleading and has led to a lot of problems.

The word "severe," the way most people understand it, means extremely serious, so nonsevere would be anything that is not extremely serious. That is not what the term is supposed to mean. It is supposed to mean insignificant, and I think the very word that is used here is the occasion for very serious error.

Courts are just now starting to recognize this, and we have referred to two cases in the written testimony, the most recent of which happens to have been, fortunately for us, decided by the U.S. Court of Appeals in the 11th Circuit only this year, and it explained that the term "nonsevere" means insignificant, why it is so, how the term is supposed to be applied.

Finally, the fifth problem involves the so-called medical improvement standard. That is the standard to be used in deciding termination cases. By now, as I imagine the committee is aware, the majority of the U.S. Courts of Appeal have held in some form that a medical improvement standard has to be used by the Secretary in termination cases, and of course the committee's bill made such a provision.

Really, I would like to say even though talking about this as a different standard is a convenient way to describe it, in our opinion it really is not a question of a different standard of evaluation. The standard of judging termination claims is the same as the standard for judging initial application claims. Does the person still have the ability to do substantial gainful employment, considering his age, education, and work experience?

All the medical improvement standard cases mandate is a specific application of the evidentiary rule of res judicata which binds parties to a previous ruling which they were also parties, except in specific exceptional cases. It is, in short, using the same apples that Judge Grossman was talking about. It prevents people from getting more than one bite at the same apple, and the rule applies not only against the Secretary but also against claimants who are coming back in with new claims.

It is not a different standard but simply one more piece of evidence on the scale in favor of the claimant's case, and that piece of evidence in favor of the claimant is the fact that there has been a favorable ruling by the Secretary indicating that this person was disabled and has the effect of shifting the burden of proof to the agency to show why things are different now than they were at the time of the designated original decision.

Again, this is discussed at some length in the written presentation with some suggestions for some alterations in the statutory section as written in the current bill, so in summary, we hope the committee will take these remarks, including the details in the written report, into consideration in acting on this legislation, and as stated in the written presentation, do not consider our job necessarily to have been completed by today's testimony or today's written submission, and we would be very happy to work further with the committee in whatever ways the committee might consider we could be useful and help to make the fairest and most humane social security disability system that can reasonably be operated.

Thank you.

Mr. FOWLER. Thank you, Ken, very much for the fine summary. Whatever the typewriter regurgitates will be made a part of the record.

Mr. LEVIN. Thank you.

[The prepared statement and an attachment follow:]

STATEMENT OF KENNETH G. LEVIN, DIRECTOR OF LITIGATION, ATLANTA LEGAL AID SOCIETY, INC.

I. IDENTITY OF THE WITNESS AND ITS REPRESENTATIVE

This document sets forth the evidence and position of the clients of the Atlanta Legal Aid Society, Inc. concerning various issues now being considered by the Social Security Subcommittee of the U.S. House of Representatives in connection with H.R. 3755, in more detail than the time available for oral presentation to the Subcommittee permits. It has been put together by the witness, Kenneth G. Levin, attorney at law, after a quick survey on very short notice of those members of our staff who have represented claimants in OASDI and SSI disability claims during the past two or three years, and also includes evidence and opinions derived from the witness's own handling or supervision of such cases during the relevant period. Time has not permitted a complete compilation and presentation of all or even most of the relevant cases handled by employees of the Society during this time. However, based on the personal experience of the witness as well as that of several of the other staff members surveyed, the individual cases used for illustrations accurately

present the kinds of difficulties with the disability determination procedures that are discussed in this statement.

The Atlanta Legal Aid Society, Inc. is a legal services organization established in 1924 to provide civil legal assistance to very poor residents of the Atlanta metropolitan area. At present it serves residents of the following five Atlanta-area counties: Fulton, DeKalb, Cobb, Clayton and Gwinnett. Atlanta Legal Aid has received the majority of its funding from the federal government since the legal services office of the Office of Economic Opportunity was set up in the late 1960's. Since the federal Legal Services Corporation was established in the mid-1970's, the Society's federal funding has come from that source.

Kenneth G. Levin is the Director of Litigation of Atlanta Legal Aid. Mr. Levin graduated from the Yale Law School in 1969, and has been employed as an attorney with Atlanta Legal Aid since that year. He has handled, or has supervised the handling, of several hundred Social Security and SSI cases from that year to the present, and therefore has as much personal expertise with such cases as any other ALAS staff member. The cases have been handled both before the Social Security Administration and on review in the federal courts, including U.S. District Court, the U.S. Court of Appeals for this Circuit, and, in two instances, the United States Supreme Court.

II. THE FIVE MAIN PROBLEM AREAS

The experience of the Atlanta Legal Aid Society with Social Security disability cases very strongly supports the Committee's concern that there are serious problems in the agency's disability determination process. The Reagan Administration's handling of cases involving termination of previously-certified disability payments has intensified—often severely—some of these problems. However, some of the problems existed before this intensive termination program was begun and may, therefore, be expected to persist even with initial application determination unless corrective action is taken either by Congress or in some other manner, such as by court review.

There are five broad areas in which, in ALAS's view, systemic problems in the process exist. These are: (1) the fair and informed evaluation of claimants who base their disabilities wholly or partially on mental impairments, including not only psychiatric conditions in general, but in particular cases involving pain and alcoholism or other substance abuse or addiction; (2) reliance on sometimes-perfunctory reports of physicians employed on a one-time basis for the sole purpose of evaluating the nature and severity of a claimant's impairments; (3) reliance—principally at the pre-Administrative Law Judge administrative level—on the brief opinions of physicians who have never examined the claimant but who are simply offering their written interpretations of medical reports of doctors who have examined the claimants; (4) rendering, in a high percentage of inappropriate cases, of disability decisions based either on directed conclusions from the so-called "grid" regulation tables, or on the finding that the claimant does not suffer from any "severe" impairment (Step 2 of the Sequential Evaluation Process) and (5) the appropriate standard to be applied when the agency is considering the termination of benefits payments to an individual whom the Social Security Administration itself has previously found to be sufficiently disabled to qualify for benefits.

III. INDIVIDUAL DISCUSSION OF EACH PROBLEM AREA

A. Evaluation of mental impairments

In ALAS's experience, there have long been special difficulties in the handling of claims based wholly or partially on mental impairments. Although these problems have been exacerbated by the current accelerated termination process, many of them predate that process. The difficulties apply not only to claims based on illnesses commonly understood as mental (e.g., schizophrenia, depressive and anxiety neuroses), but also to such conditions as alcohol and drug abuse, and to pain-related disabilities, which very often have substantial mental components.

To some extent, it is necessary to draw inferences about why these cases should raise the problems they do. Our experience suggests that the problems are (a) continuing prejudice against mental disabilities by many individuals in the decision-making process, (b) lack of specific and comprehensible standards for decision-makers to apply to resolve these cases, and (c) perception of mental impairments (including pain) as more subjective and less tangible than physical impairments. The absence of comprehensive standards feeds into the other two problems, because to the extent that such standards remain lacking or vague, the decisionmakers are

more likely to deal with mental problems as too subjective or otherwise less worthy than physical problems.

The Committee's bill acknowledges the need for better standards, and its provision for studying better ways to evaluate pain is a good move in the right direction. However, the bill appears to focus its initiative for better standards concerning other mental disabilities on the so-called "Listing of Impairments" contained in the Appendix to Subpart P of the Secretary's regulations. Whether or not those standards are in need of some revision, this is not the principle area in which the need for better standards arises.

All Social Security disability claims—physical as well as mental—are subject to evaluation under what is known as the Sequential Evaluation Process. That process consists of five steps, that are supposed to present the most orderly method for judging the extent of a claimant's disabilities. At Step 1, benefits are denied without further inquiry if the individual is in fact engaging in substantial gainful employment. At Step 2, benefits are denied without further inquiry if the individual's impairments are "non-severe"—a rather misleading term that is supposed to mean (see infra Item E, pp. ——) "insignificant." At Step 3, benefits are granted without further inquiry if the claimant's impairments are so very serious that it can be presumed that regardless of the individual's age, education and work experience, they would completely disable him. This is the step at which the criteria from the "Listing of Impairments" are used. At Step 4, inquiry is directed to whether or not the claimant is capable of returning to his "former work"; if so, no benefits are payable. Finally, at Step 5, if none of the other steps resolves the case, inquiry is focused on whether, considering both the impairments and the claimant's age, education and work experience, there are jobs available in significant numbers that he can perform. See 20 CFR §§ 404.1520 and 404.920.

As clearly established in the case of *Mental Health Association of Minnesota* v. *Heckler*, 554 F.Supp. 157 (D.Minn., 1982), aff'd 720 F.2d 965 (8th Cir., 1983), the Department of HHS was in many instances disregarding this required process (and the Social Security Act) by denying claims based on mental illness unless the person's condition rose to the very high levels set forth in the Listing of Impairments (i.e., stopping at Step 3 of the process). As the Court found, that Listing is only intended to streamline the process of evaluating claims by eliminating consideration of age, education and work experience for those cases that were so very serious that such further inquiry would very seldom produce any result other than a finding of total disability. However, the Act and regulations require payment of benefits not only to claimants whose illnesses are so serious as to leave the conclusion in their cases very clear, but also to claimants whose impairments would not necessarily preclude every sufferer from working but which in fact preclude the particular claimant from doing so because his limited education, unskilled or partly-skilled work experience, or advancing age leave him more vulnerable to vocational disability than a younger, better-educated applicant might be. Because evaluating these cases (at Step 4 and especially at Step 5) requires the exercise of considerably more judgment by the decisionmakers than does evaluating cases clear enough to stop at Step 3, it is in the area of Steps 4 and 5 that better mental health evaluation standards are more urgently needed, rather than at Step 3.

Several of our recent cases illustrate one or more of the above problems, as well as some of the problems discussed later in this presentation. We summarize several of those here.

Mrs. S. B. was initially granted benefits in 1974, as a result of a report by a psychiatrist hired by the Secretary to examine her. His diagnosis was chronic paranoid schizophrenia in partial remission at the time, but still so serious that the psychiatrist did not even feel that Mrs. B. was capable of managing her own funds, but that she needed a guardian to do so. (This is an extremely serious degree of impairment; only a small percentage of ALAS's clients certified for mental disability benefits are actually incompetent.)

In connection with her proposed termination, Mrs. B. was examined by a clinical psychologist hired by the Secretary, late in 1980. In addition to low intelligence (I.Q. 81), the psychologist reported that Mrs. B. still suffered from schizophrenia with impairment of a "moderately severe to severe" degree.[1] He reported that she was "actively psychotic," [2] suffered hallucinations, had "marked regression in daily func-

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[1] The Secretary defines a "moderately severe" degree of impairment as one that substantially interferes with the ability to function, and a "severe" degree of impairment as one that precludes functioning at all.

[2] Many Social Security decisionmakers inaccurately believe that one must be "psychotic" in order to qualify for benefits based on a mental impairment. However, that term means only a

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tioning," had "a great deal of depression," was "socially quite withdrawn," suffered "much distortion of reality contact, much exaggeration in perceptual processes, and a good deal of disturbance in her associations." She had such "poor control over basic emotional responses," that she several times "recoiled in apparent horror" after being shown "some relatively benign picture" on a psychological test, such as an incomplete picture of a crab. Her prognosis was "guarded," with the possibility that extended drug therapy might improve her condition but also the possibility that she could "decompensate even further."

Despite the psychologist's very clear report, uncontradicted by any other psychiatric or psychological evidence, Mrs. B.'s benefits were terminated. The Georgia medical consultant, a psychiatrist who did not examine Mrs. B. himself but only reviewed the psychologist's report, recommended the termination, saying: "There is no clear evidence of major psychosis. . . . evaluation of her activities [unspecified] indicate [sic] she retains the ability to comprehend and follow instructions, perform routine tasks, make acceptable judgments and her ability to relate seems adequate. Thus she is able to function at Entry Level." On appeal to an Administrative Law Judge, the decision was summarily reversed and Mrs. B.'s benefits reinstated.

In a second case, Ms. C. J. was also originally certified to receive benefits in 1981 on the basis of schizophrenia. Less than a year later, Social Security initiated a review process, requiring her to be re-examined by one of its consultative psychiatrists. He diagnosed depressive, schizo-affective schizophrenia, with psychomotor retardation, emotional distance, serious depression, a history of violence, paranoid thoughts, blunted affect and hypochondriasis. He concluded: "Overall I feel that her psychiatric condition at this time is severe. I see no way that she could relate to coworkers and supervisors at this time and she is not capable of meeting the mental demands of unskilled labor."

Once again, based solely on this very strongly favorable report, Social Security still decided to terminate benefits. They explained:

"A current psychiatric evaluation in file indicates that your condition is still severe, however, you continue to retain the ability to understand, remember, and carry out simple instructions. The medical report also shows that though your ability to respond appropriately to supervisors and co-workers is somewhat impaired, you still retain good ability to respond to customary work pressures. At the present time, you have the ability to perform simply unskilled work activities."

Mrs. J.'s treating psychiatrist (whose records were not obtained by Social Security prior to making its decision) concurred in the diagnosis made by Social Security consulting psychiatrist and stated: The above mentioned patient is not able to work for gain. It is an effort for her to make her clinic appointments on a regular basis." This evaluation came from a psychiatrist with a reputation for being especially "hard-nosed" in her disability evaluations.

On appeal, the ALJ again summarily reversed and ordered Mrs. J.'s benefit restored.

A third claimant, Mr. J.Y., was receiving not only Social Security but full V.A. (Veteran's) disability benefits based on his schizophrenic condition at the time, Social Security proposed to terminate his benefits. Again, the consultative psychiatrist hired by Social Security to examine Mr. Y. diagnosed chronic undifferentiated schizophrenia that had required five hospitalizatons, a simple, childlike personality, and a history of an aimless, drifting existence throughout the adult life of the claimant (who was then aged 44). He reported a significant impairment in Mr. Y's interpersonal relations, and an "extremely poor" vocational prognosis. Nevertheless, the state Disability Determination Unit's psychiatrist (who conducted a paper review, as in Mrs. B's case), characterized the mental impairment as "moderate," and the agency conclusorily found that benefits must be terminated because the condition was insufficiently severe. Again, the ALJ reversed on further appeal.

Two other mental disability cases follow a somewhat different pattern—that of the agency's penalizing the claimant by withdrawing benefits because of behavior caused precisely by the mental disability forming the basis for the benefits claim.

Mr. A. R., who had been drawing benefits since he was a teen-ager due to a combination of very low I.Q. (in the 60's) plus other major psychological (principally behavioral) problems, had a lifelong history of such a condition. He was scheduled for a psychological re-evaluation involving extensive testing but, although he submitted to more than an hour of such testing, he walked out before the procedures were concluded. He also refused to attend his hearing before the ALJ although directed

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mental state of confusion and disordered thought processes, and does not purport to describe all or even most of the mental conditions that can be disabling. In our experience, neurotic mental conditions more often constitute the disabling impairment than do psychotic ones.

to do so by his guardian. However, the guardian appeared and testified that Mr. R.'s behavior was consistent with his regular behavior, whether at home, on an attempted job, etc., of walking away from the slightest stress and resisting authority in all forms—a tendency supported by the psychological evidence available in the record. However, this behavior was used as a basis to deny him benefits for unco-operativeness, and the case is still pending on appeal in the federal courts.

In a similar vein, Social Security proposed to terminate the benefits of S.A., the minor son of J.C., on ground that Mr. C.'s mental disability had ended. Mr. C. had been separated from his wife and son for some ten years because of problems related to the mental condition, and they did not even know where he was. So far the agency has refused S.A. and his counsel access to Mr. C.'s files or to information about him, but through their own investigation they have learned that Mr. C. is well known to one of the agency's District Offices in Florida as an aimless wanderer who drops into their offices from time to time appearing mentally unbalanced, However, Mr. C. refused to co-operate with Social Security either by appearing for another psychiatric examination, or by showing up for his own hearing (notice of the time and place of which was refused to S.A. until after the decision was made). Instead, he wrote to the agency stating his refusal to attend because of his belief that the agency was engage in a conspiracy against him. The agency also had before it, when they made their September, 1983 adverse ruling, records of Mr. C.'s psychiatric hospitalization in Florida for four months between March and July of the same year. The denial was based on a conclusion that Mr. C.'s illness was only episodic, and that Social Security was unwilling to "chase people down" in order to inquire further into their current conditions in these cases.

Another case, that of Mr. E. W., illustrates the barriers encountered by mentally disabled claimants whose impairments include addiction to or abuse of illegal drugs or alcohol. Mr. W. S.'s was an initial applications, not a termination, but the record was so strong on submission to District Court after a final adverse ruling the Secretary, that the Court ordered that the application be approved and benefits paid immediately, without further action before the administrative agency.

Mr. W. had a record of drug addiction of all kinds going back to his teenage years, combined with other serious mental problems that were differently diagnosed at different times but which now appear to be part of what is officially called a Borderlfine Personality Disorder. (This is an excellent example of a severely-disabling mental illness that is not a phychosis.) The voluminous expert evidence was all but unanimous concerning the seriousness of both aspects of Mr. W.'s illness. Mr. W. was trained as a cosmetologist and hairdresser, but his personality disorder so seriously interfered with his ability to relate properly both to customers and to supervisors and co-workers, and resulted in such bizarre behavior on a regular basis at jobs, that he had never been able to hold steady employment throughout the 15 years he had tried to work, and his average annual earnings during this time were less than $1500. He was under treatment in the Drug Dependence Unit of the hospital in which today's hearings are being held, and so convinced were his treating therapists of his entitlement to benefits, that the Unit Director took the unusual step of appearing and testifying personally on Mr. W.'s behalf at his hearing before the ALJ.

In this case, the agency had denied Mr. W.'s claim on the basis that his mental impairments did not meet the Listing of Impairments level of severity (Step 3), that he was not psychotic, and that "with proper medical management" his condition was "not expected to last for a continuous period of twelve months. . . ." The drug problems were mentioned but not further discussed. These conclusions constituted pure speculation, and when the ALJ heard the evidence he issued a ruling in favor of Mr. W., approving his claim.

However, the case was not over. As the law permits, the Appeals Council (which is the highest reviewing body in the Social Security administrative appeals process, sitting above the ALJ) elected to review this case on its own motion. In its final opinion denying all benefits, the Council systematically attacked and rejected nearly every piece of evidence the ALJ had considered, both expert medical and Mr. W.'s own testimony. They concluded that he could go back to work as a hairdresser.

As previously stated, on District Court review the U.S. Magistrate who heard the case found the record so strong in Mr. W.'s favor that an outright reversal with directions to pay benefits was appropriate. The District Judge agreed, in an order in which he described the Secretary's decision as "riddled with error," and certain of her actions in the case as "a source of wonderment, and exasperation, to this court," as "irresponsible," and as "far too haphazard for any rational, responsible system of adjudication."

To conclude this section, we mention two cases involving pain as a substantial component of a claim of disability. The courts of nearly every federal jurisdiction

have by now held that in pain cases, (a) an individualized determination must be made of how bad the pain is actually experienced by the particular claimant and how it affects his individual ability to function, since pain perceptions differ very much from person to person, and (b) conclusions as to the extent of pain must be made in every case in which the medical evidence shows they may possibly cause the claimant pain of the kind reported, even if there is no objective evidence showing the degree of pain the claimant is experiencing. (The latter rule is needed because there is ordinarily no way in which one can measure the amount of pain, if any, that a person is suffering from.) Nevertheless, the agency and its evaluators often give short shrift, or even no shrift, to complaints of pain simply because it is difficult to measure or verify.

Mrs. L.S. had been receiving disability benefits based, in substantial part, on pain resulting from a back injury. Her benefits were terminated without even having a new examination performed, solely on the basis of a proper review by a Disability Determination Unit consultant who evaluate only objective observations, not subjective pain. This consultant reported—without ever having seen a Mrs. S. — that she could perform work at the "medium" exertional level.

On appeal, Mrs. S. presented a new report from her treating physician—the one whose report has gotten her on disability payments to begin with. His opinion had not been sought by the agency in connection with its termination. His new report stated that Mrs. S.'s condition was as bad or worse than it was when he originally reported on it, and that she continued to suffer disabling pain. After reading only the documentary evidence, the ALJ ordered Mrs. S.'s benefits reinstated without even holding an oral hearing.

Another client, Mrs. S. L., had begun receiving disability benefits in 1976 as a result of a back injury with resulting pain. A consulting orthopedist who had examined Mr. L. in connection with the proposed termination of benefits in 1982, found little objective evidence of disability, but stated that the pain reported by the claimant seemed to have a significant psychological component, and suggested that a psychological evaluation might be resorted to. The original 1976 evidence, as well as all expert evidence presented in 1982, all had stressed the importance of the psychological component to Mr. L.'s pain—a very common situation in pain cases, especially back pain cases. Yet the ALJ, prior to denying Mr. L.'s claim, refused his counsel's request that a consultative psychiatric or psychological examination be performed by Social Security, stating his belief that psychiatric reports depend almost entirely on the truth of what the patient-evaluee tells the psychiatrist, and therefore that because he believed the claimant would lie to the psychiatrist about the pain he was claiming to experience, he would not attach any weight to a psychiatric report even if one were obtained. The case is presently on appeal.

Several things are illustrated by the above cases and others like them. First, mental disability cases (including those involving pain) tend to be viewed with suspicion because they seem less tangible than physical disability cases. Second, the sufferers may be blamed for their condition in ways that physical invalids are not, probably because of an unstated assumption in some people's minds that the claimants could do better if they would only "put their minds to it." Third, there is a suspicion in some quarters even of the opinions of examining psychiatrists and psychologists, founded on the rather absurd notion that their years of specialized training still leave them incapable of doing much more than parroting back what the patient says is wrong with him and attaching a medical label to it. Fourth and related to these things, decision-makers do not understand the relevance of certain kinds of behavior that suggest the presence of mental impairments, and do not know how to make objective judgments concerning mental impairments or psychiatric reports thereon. Finally, decision-makers apparently do not appreciate the fact that impairment of ability to relate to customers, co-workers and supervisors, or to withstand the ordinary pressures of a job, may completely disable a person from work even though he is not psychotic, he may be able to manage other aspects of living, and he may appear close enough to "normal" on a single viewing that the effect of having to work on his behavior and appearance is discounted or ignored.

Specific guidelines for mental disability evaluation may be of help with these problems, but these should be for use at Levels 4 and 5 of the Sequential Evaluation Process, rather than Level 3. Psychiatric or Psychological evaluation with a detailed report should be mandatory in all such cases, including those involving pain (where such psychological tests as the MMPI may be very helpful). Perhaps it would also be desirable to mandate that all employees charged with making decisions in these cases—whether employees of Social Security itself or of state Disability Determination Units under contract to make these decisions—undergo detailed training concerning mental impairments before being permitted to act on such cases. Finally, it

is suggested that what is known in the profession as "DSM-III"—the almost 500-page Third Edition of the Diagnostic & Statistical Manual of Mental Disorders published by the American Psychiatric Association—be used and heavily relied on by mental disability evaluators. This standardized text, which lists, classifies and discusses in detail all recognized mental illnesses and which is used by all American psychiatrists and psychologists, constitutes a valuable source of guidelines and criteria for evaluating such impairments. At present, it is seldom if ever used in these cases unless introduced in evidence by claimants' representatives.

B. Perfunctory consultative medical examination

Decisions in disability cases often rely heavily on the reports of consultative physicians who are hired by the Secretary to conduct one-time examinations of claimants and report their results and conclusions. Certainly, such reports can be very helpful in properly resolving such claims, and many of these are carefully and conscientiously done. Unfortunately, however, too many of these evaluations are not performed by physicians whose principal business is the conducting of such one-time evaluations for pay by government agencies including but not limited to Social Security, rather than by doctors who spend most of their professional time actually treating patients. Such "professional evaluators" may be more likely to "process" in a perfunctory manner, as many claims as they can in order to earn maximum income therefrom, and may be more likely to recommend denials of a high percentage of such claims in order to tell Social Security what it is believed they want to hear and thereby keep the consulting fees coming in. The very worst of these abuses occasionally come to the attention of the courts—see for example *Adams* v. *Heckler*, 566 F. Supp. 1047 (W.D. Va., 1983)—but it is usually difficult or impossible for the average claimant to prove that he has been evaluated by such an unqualified or biased physician or group of physicians.

A partial solution to this problem is to legislate the requirement that a great many courts have already mandated, namely, that much greater weight be given to the reports and opinions of the claimants' treating physicians than to those of one-time examining consultants. This is required because treating physicians are correctly assumed to know the claimant's medical conditions more accurately than one-time consultants because of their familiarity with the patient over time. Where such treating phsyicians exist, seeking out their opinions should be mandatory.

Where consultative physicians must be used because of the absence of any treating physician, a tighter rein should be imposed on their reports where possible. Reports should be required to specify the amount of time the evaluator actually spent with the patient, and should not contain statements of "fact" that their signer did not actually observe. Where laboratory tests or x-rays were performed and relied upon, the experts who conducted them should supply the reports of their results. Doctors who earn their living exclusively or primarily from evaluations for agencies should not be used, but rather doctors whose principal income derives from patient treatment should be hired for consultative evaluations.

C. Disability determination units

In the majority of states, pursuant to Social Security regulations, decisions at the first two of the four administrative levels whithin the Social Security. Administration (initial determination and reconsideration) are made not directly by Social Security, but by Disability Determination Units of state agencies under contract to Social Security to make those decisions for it at those levels. The quality level of these state disability determinators varies greatly from state to state, but major problems exist with them in some states, incuding Georgia. As illustrated in several of the mental-illness cases described above, some of those decisions are disastrously inaccurate, either because they result from the application of some sort of standard of disability enormously higher than that prescribed by the Social Security Act, or because the evaluators (including some of the physician employees) are simply not competent. The physicians so employed never actually examine the claimants whose cases they are evaluating, and the case law is clear and unanimous that the opinions of non-examing physicians are entitled to little or no weight. Yet at the initial determination and reconsideration levels, it is extremely rare for the state agency to take action different from that which its one-time paper evaluator recommends in a brief, often hand-written report.

Part (but only part) of the problem appears to be that state evaluators (including physician employees) are simply not properly instructed concerning what the disability criteria under the Social Security Act are. They are quite likely to certify that a claimant's impairment is "nonsevere," in a manner that suggests an understanding that that term means "not of the most serious kind" rather than "insignificant," as it does mean (see *infra*, Section D, pp. ——). In any event, both state and

Social Security employees below the ALJ do not use (and may not be given) copies of the governing Social Security disability regulations, but instead use "in-house" handbooks that may deviate to a considerable degree from the standards mandated by the regulations and court decisions in the jurisdiction. One reason for this may be that the regulations are thought to be too technical for non-lawyers to understand and apply. However, in light of the revision of all Social Security and SSI regulations from legal to "plain language" during the past several years (a process now believed to be completed), this should no longer be the case. It could be a big help if all disability evaluators, state and federal, were required to rely solely or primarily on the actual governing regulations and statutes, rather than some agency document that may inadvertently be leading them astray.

The benefits that claimant Mr. G. H. had been receiving since 1974 were terminated by Social Security in 1981 on the basis that he could do a wide variety of construction jobs. Mr. H.'s multiple impairments included significant venous insufficiency in both legs that caused him great pain, and a rare and severe skin disease called prurigo nodularis (or nodular prurigo) that causes intense and tormenting attacks of itching on a very frequent basis. The DDU's denial of benefits included the following: "The veins in your legs do not work as they should, but they are not so bad that they cause constant swelling and leg sores." And as to the skin condition, "it is not disabling because it is not infected, draining, or limiting your movement."

Mr. H.'s successful appeal to an ALJ concentrated primarily on his skin disease. His representative, among other things, took the obvious step of providing the agency with an excerpt from a dermatology text that discussed Mr. H.'s rare condition. It is unclear why the DDU had not done this considering the fact that they could not have been familiar with the disease. The text said:

"The patient [with this disease] is tormented by crises of pruritis of intense severity, occurring daily or at more frequent intervals. . . . Treatment is in general so unrewarding that a thorough initial assessment of the patient's emotional and psychiatric state is desirable, for it may suggest a practicable therapeutic approach. . . . Local applications [of ointments] are of little value . . . relapses are frequent. Tranquillizers may give some relief."

The ALJ allowed benefits after considering this and a report from Mr. H.'s treating physician (also not obtained by DDU).

It is unclear where DDU obtained the criteria to make the evaluation they produced. Venous insufficiency of the legs can certainly limit a person's ability to work even though it does not cause "constant swelling and leg sores." And an incurable skin condition that produces at least daily itching attacks characterized by experts as "tormenting" may be even more disabling than one that is "infected, draining, or limiting [to] movement."

Owing to problems like these and the ones illustrated in the section on mental impairments, the bill's apparent confidence in improving evaluations by mandating (in psychiatric cases) more detailed paper reports by physician employees of the DDU may be misplaced. We believe that reliance on such paper review opinions should be reduced rather than increased. Requiring that decision-making evaluators become much more familiar with controlling regulatory standards for their decisions, that they obtain and rely on reports of treating physicians as well as medical texts dealing with the impairments in question (and especially DSM-III for mental impairments), and that they use reports of examining consultants where necessary, ought to produce better results. If the evaluators have a better understanding of what they are supposed to be doing, irresponsible "paper review" reports of the kinds discussed herein should become unnecessary.

D. Improper "short-cut" decisions

One further systemic problem with disability determinations—alluded to several times earlier in this paper—is the tendency of the agency at all levels to make adverse decisions without having completely evaluated the claim by considering not only the medical evidence, but also the age, education and work experience of the individual claimant, as the Social Security Act requires. The pressure of large numbers of cases to be decided, contributed to in part by the accelerated termination review process, is part of the problem, in that it places a premium on fast rather than accurate decisions.

The problem is related to the Sequential Evaluation Process discussed earlier in this paper. This occurs at two levels of that process. The first is Step 2, where a claim may be denied on the medical evidence alone if the claimant's condition is "non-severe." The second is Step 5, where age, education and work experience may sometimes be determined not by individualized evidence, but by resort to the so-called "grid" tables that form a part of the Sequential Evaluation guidelines. If deci-

sions at those levels were strictly limited to the criteria set forth in the regulations themselves, this would not constitute a very serious problem. However, the temptation offered by the regulations to make decisions by plugging facts into tables and obtaining automatic results, or to disregard non-medical factors where the medical conditions are more than significant, has proven too great to resist in a great many instances.

The U.S. Supreme Court has recently held that it is proper for the Secretary to rely on the "grid" regulations where their use is strictly circumscribed by the limitations contained in the regulations. *Heckler* v. *Campbell*, 76 L.Ed.2d 66 (1983). The two most important such limitations that are often disregarded are (a) the requirement that the claimant's age, education, and residual functional capacity after considering all medical impairments must fit precisely within all criteria called for in the chosen grid "slot," and (b) the "grid" may not be used to direct a conclusion where there is any "non-exertional impairment," i.e., the "grid" is supposed to be limited to cases presenting exertional impairments only. See *Cowart* v. *Schweiker*, 662 F.2d 731, 736 (11th Cir., 1981), *Perez* v. *Schweiker*, 653 F.2d 997 (5th Cir., 1981), *Broz* v. *Schweiker*, 677 F.2d 1351 (11th Cir., 1982) (essential holding adhered to following appeal, remand and reconsideration). Non-exertional impairments include all mental conditions, claims of pain, most skin conditions, environmental problems such as alleries, breathing difficulties, sensitivity to air pollution or chemicals, postural limitations, and so forth. As the Committee might suppose, only a rather small minority of claims present solely non-exertional impairments, so reliance on the "grid" regulations should be the exception rather than the rule.

Until this year, only one reported decision intelligently discussed the proper meaning of the terms "severe" and "non-severe" as defined in the regulations relating to Step 2 of the Sequential Evaluation Process, and that was *Jones* v. *Schweiker*, 551 F.Supp. 205 (D.Md., 1982). Very recently—fortunately for the residents of Georgia, Florida and Alabama—the U.S. Court of Appeals for the 11th Circuit issued an equally sensitive and accurate ruling in *Brady* v. *Heckler*, 724 F.2d 914 (11th Cir., 1984). These rulings demonstrate that, notwithstanding their use of the very misleading term "severe," the regulations permit a decision at Step 2 of the process only when the claimed medical conditions are so insignificant that it is apparent that they have no meaningful effect on the claimant's ability to do all the work that he or she could do without those conditions. This is just what the Secretary stated in the Federal Register that those regulations meant when they were originally published approximately five years ago, but it is not the practice that has been followed in the agency under the current administration.

Because the term "severe," as commonly understood, means "very serious" rather than "significant," it is quite understandable that disability adjudicators—particularly state employees who do not even use the regulations themselves—would have regularly misunderstood it to bear the former meaning rather than the latter. Because a decision at Step 2 of the Sequential Evaluation Process will be much simpler and more summary than one made after a full evaluation of the claimant's conditions, it has been heavily used in recent cases notwithstanding its very limited applicability as explained in *Brady* and *Jones*.

Ms. F.V. was initially granted benefits in late June of 1981. Her case indicates the improper use of the "grid" regulations to deny benefits. Her multiple impairments included diabetes, hypertension, phlebitis of both legs with severe venous insufficiency, a damaged peroneal nerve in one leg secondary to both the phlebitis and the diabetes, and depression.

A notice of proposed termination of benefits was sent to Ms. V. less than a year after they were first granted. A consultative physical examination documented the presence of all the above conditions. For the most part, they imposed non-exertional limitations (postural, pain, depression). Nevertheless, the ALJ who heard Ms. V.'s appeal applied the "grid" regulations to affirm the termintion of benefits to her. On appeal to federal court, the judge reversed outright and ordered benefits paid.

A second example of this was the case of Mr. W.S. Mr. S. had been receiving benefits for over ten years when he received his termination notice. As a result of chemical poisoning caused by a dye he had regularly used in his former work, he had a very severe skin condition that caused him great discomfort any time he perspired. Any form of physical labor would, of course, cause such excessive perspiration. Yet because Mr. S. had minimal education and work experience only as a manual laborer, and was in his late 50's when termination was proposed, that was the only type of work for which he could have qualified.

Once again, the ALJ applied the "grid" regulations after concluding that Mr. S. had the residual functional capacity to do "medium" work. The fact that Mr. S.'s

condition was almost exclusively non-exertional should have prevented that, but did not. This case is currently on appeal.

Denial of benefits because of an allegedly "non-severe" impairment or combination of impairments is equally common, in cases in which the medical problems are much beyond the "insignificant" level. For example, Ms. M.D. had been receiving benefits since 1977 because of a serious case of arthritis affecting her back, arms and shoulders and resulting in severe pain. As is common in pain cases, there was a substantial psychological overlay to her condition. The DSM-III recognizes several related conditions that used to be grouped together under the old terminology as "hypochondriacal neurosis,"—Somatization Disorder (Class 300.81), Conversion Disorder (Class 300.11), Psychogenic Pain Disorder (Class 307.80), and Hypochondriasis (Class 300.70). Although lay people sometimes carry the prejudiced belief that a "hypochondriac" is simply a person who deliberately goes around complaining of illnesses that they do not have and do not experience, medical specialists well know that a sufferer from one of the above conditions really experiences the pain and suffering of which they complain, to just as great an extent as they would if its source were primarily physical rather than primarily mental. And Ms. M.D. was so diagnosed.

Though the evidence at termination in 1983 supported the continuation of these conditions at least at earlier levels, Social Security not only ordered benefits terminated, but did so on the basis that Ms. D's conditions were "non-severe." Whatever the ultimate ruling in her case (now on appeal in federal court), there is no question that her conditions are "severe" within the meaning of the Secretary's regulations as explained in the cases cited above.

Benefits were also denied to Mr. A.W., who had been receiving them since 1975, on a finding of a "non-severe" impairment. Mr. W. had actually broken his back prior to application from benefits, and had had major surgery involving a bone graft and work on his spinal column. Although he was saved from paralysis, continuing spinal problems left him in constant, chronic pain, and also caused frequent dizziness, to the point of passing out several times a month.

On evaluation by the Disability Determination Unit, the evaluators once again completely disregarded all allegations of pain. Claiming that Mr. W. was capable of performing "medium to heavy work," termination of benefits was upheld on the basis that Mr. W.'s impairments were "non-severe." A supplementary report from Mr. W.'s treating physician (which, once again, DDU had failed to obtain) produced a reversal of the decision to terminate at the ALJ level.

Short of educating decision-making personnel concerning the meaning of "severe" and the proper use of the "grid," it is unclear that legislation can effectively address this problem when the Secretary's own regulations already forbid the practices here under discussion. We can only suggest that the Committee consider the possibilities of: (a) eliminating the Sequential Evaluation Process, including the "grid," altogether in favor of a return to the method of deciding cases used before these regulations were enacted, or at lest (b) prohibiting the rejection of claims on the basis that there is no "severe" impairment claimed (i.e., eliminating Step 2 of the Sequential Evaluation Process).

E. Standard of proof in termination cases

As a result of the accelerated evaluation of current disability recipients for possible termination of their benefits, courts throughout the country have been confronted—usually for the first time—with the legal question of what standard the Social Security Administration is supposed to apply to evaluate such cases. On the other hand, Social Security has consistently adhered to the view (under the present Administration) that there is no difference between the manner in which it must evaluate cases in which it seeks to terminate benefits presently being paid, as compared with those cases in which the claimant is applying for benefits for the first time. On the other hand, most federal courts in the country (including, by now, the majority of the U.S. Courts of Appeal) have agreed with claimants' arguments that some kind of a "medical improvement" standard should be applied in termination cases, with a presumption that the disability previously found to exist continues to do so unless the Secretary affirmatively shows, by proper evidence, that the earlier condition has improved to the point of being no longer disabling.

Because of the published determination by the Reagan Administration's Secretary of Health and Human Services setting forth her "non-acquiescence" in two rulings of the U.S. Court of Appeals for the Ninth Circuit on this point (*Patti* v. *Schweiker*, 669 F.2d 582 (9th Cir., 1982), and *Finnegan* v. *Matthews*, 641 F.2d 1340 (9th Cir., 1981)), and because of the recent review by the United States Supreme Court of an aspect of injunctive relief granted in the first of those two decisions, more publicity

has been focused on the "medical improvement" rulings in that Circuit than on those on the other federal Circuits. That standard became the rule in the 11th Circuit (covering Georgia, Florida and Alabama) as a result of *Simpson* v. *Schweiker*, 691 F.2d 966 (11th Cir., 1982), decided about one and one-half years ago. Since the Committee presumably has access to information regarding the rulings of other Courts of Appeals and District Courts to the same effect, we will not set them forth unless requested by the Committee to do so. However, we believe it would be to the Committee's benefit to familiarize itself with the ruling in *Shaw* v. *Schweiker, 536 F.Supp. 79 (E.D.Pa., 1982)—a decision relied on by the 11th Circuit in Simpson*—because of its thoughtful and considered discussion of the legal and logical underpinnings for what we and others have called the "medical improvement" standard.

At bottom, "medical improvement" holidays rely on the fundamental principles of fairness embodied in the legal principle known as res judicata. That principle—an ancient one of the common law applicable to all areas of litigation in all state and federal systems—holds that once a matter in dispute between two (or more) parties has been resolved one way or the other by a final adjudication, the parties to that adjudication are bound by that determination unless strong grounds exist for setting it aside. The purposes for this rule are twofold. First, contested adjudications can be time-consuming and arduous, and therefore it is in the public interest that there be an end to the right of either party to continue presenting their disputes to impartial tribunals for their resolution. Because all such adjudications are made by human beings and therefore subject to human error, it is generally recognized that what is considered a fair and just resolution of the dispute by one decison-maker might be considered unfair and unjust by another. It is considered more desirable to compel the parties to live by the decision of the person or persons hearing their case for the first time (with rights of appeal) than to allow indefinite and repeated submissions of the same controversy to other persons no better qualified (in theory) to decide the matter than the first decision-makers were. Second, the differences between one adjudication going one way, and a later one going the opposite, will as often as not depend solely on the personal judgment of the matter made by the first person as compared with that of the second. Such predictable differences of opinion have never, by themselves, been considered a sufficient reason for reconsidering the original decision a second or a third time, for otherwise nothing would ever be finally settled in a manner that the parties could rely on.

The principle works both ways. Claimants as well as the Secretary of HHS may be barred by res judicata principles from relitigating their Social Security claims on the basis of factual disputes already decided. Claimants who file new Social Security claims, with the same or similar contentions as those made when their original filings were denied, may have their second or subsequent claims denied summarily, without consideration in full on their merits, solely on the basis of res judicata. The Secretary often disposes of renewed claims in this manner, and the Supreme Court has held that the decision of the Secretary of HHS not to reopen an old claim for a full new reconsideration is not subject to court review. *Califano* v. *Sanders*, 430 U.S. 99 (1977). The "medical improvement" cases do nothing more than apply the same res judicata principles to the Social Security Administration that the Administration has been applying to claimants for many years before.

In a great many ALAS cases in recent years, the Secretary has failed or refused to apply any kind of medical improvement standard, or res judicata, to determinations involving the termination of previously-approved benefits. In many of those cases, subsequent review in the federal courts has produced orders vacating and remanding the matter to the Secretary with directions to reconsider it on the basis of those standards. In the large majority of those cases, the result has been a change in the decision and an order that benefits continue to be paid (though sometimes not until a second review in federal court).

It should be stressed that very few if any of such cases known to ALAS have involved claimants who were simply lucky enough to have had adjudicators the first time around who were careless or unfairly lenient in their evaluation of what otherwise would have been non-meritorious claims. Leaving aside the unfortunate instances in which it was the second determination that was improperly careless or unmindful of proper legal or medical standards, the bulk of these cases are simply ones in which different impartial decision-makers could reasonably arrive at opposite conclusions as to the merits of the claim, based on a review of the identical evidence. For reasons underlying res judicata, there is no just reason to allow this because there is no reason to assume that the second decision-maker's opinions are any fairer or more valid than those of the first. It is therefore not only unfair to the affected claimants, but also an improvident use of tax dollars, to permit termination of benefits in such "judgment-call" cases.

Several of the cases discussed elsewhere in this document have involved failures or refusals to apply a medical improvement standard. These include the case of Mrs. F.V., which was reversed outright in federal court after that standard was applied; Mr. W.S., currently on appeal; and Ms. M.D., also on appeal. In another case, that of Ms. H.R., the District Court remanded the case with directions to apply that standard over the secretary's objections, and on remand benefits were awarded.

Because the medical-improvement cases rely on well-established legal principles, it may well be unnecessary or even inappropriate for Congress to legislate at all in this particular area. However, if legislation in the area is deemed necessary, then Congress should be as certain as it reasonably can that the legislation does not undercut any of the legal rights claimants would otherwise possess if the standard legal doctrine were merely applied straightforwardly to their cases. Since it appears that certain language in the Committee's bill may be read to do this, ALAS suggests that some changes be made if such a provision is retained in the law at all.

Unfortunately, the actual text of the proposed legislation was not available to the preparer of these remarks at the time of preparation; only the Committee's summary was. Therefore the legislative text may not be as subject to these remarks as the summary suggests it may be.

The Committee's summary of its provision on this point seems to relieve the Secretary from applying any medical improvement standard "if new evidence . . . shows the impairment or impairments to be less severe than originally thought." It is possible that the Secretary would consider herself to have met this requirement if one of her medical consultants (see part C of this section, supra pp. ——ff), based on a single examination of the claimant for this particular purpose, produced a report containing conclusions reflecting an opinion of the claimant's condition less serious than the report on which the benefits were originally granted did. This could happen not because there was anything deficient about the original medical evidence or opinions, or because the condition had improved, but solely because the second doctor was one of those decision-makers whose views of the same evidence would have led him to a different conclusion than the first doctor reached. This would subvert the principle purpose of res judicata that in cases where two differing views of the same facts might reasonably be taken, the first one should ordinarily stand.

For this reason, any legislation containing an exception to the medical improvement requirement should specify that new evidence used to "show the impairment . . . to be less severe than originally thought" must specifically refer to and discuss the original evidence on which the first decision was based, as well as that decision itself, and must contain a supported opinion either (a) that the original opinion or decision was outright wrong (rather than a different judgment also reasonable on the facts) because of some deficiency of a medical nature contained in the evidence then available but ignored or misjudged by the original expert or decision-maker, or (b) that the original opinion was predicated on a prediction concerning the future course of the conditions which, on the basis of medical or medically-relevant data enumerated by the second expert, has turned out not to have occurred as predicted. All other contingencies ought to be covered by the provision allowing proof of medical improvement to the point of no disability from the condition as it originally existed.

IV. SPECIAL NOTE ON TERMINATION PROBLEMS

Before concluding this testimony, we wish to call to the Committee's attention a special "access to justice" problem peculiar to beneficiaries faced with contesting a proposal to terminate their benefits, which was brought to our attention by a private attorney in Atlanta who handles many Social Security cases for a fee. He points out that, in contrast to initial application cases, it will usually be especially difficult for "termination" claimants to secure adequate legal representation and they may be especially reluctant to seek it out. That is because the usual means available to claimants for securing such representation in initial application cases—withholding of up to 25% of any back benefits they are awarded in the event of a victory on appeal—is largely unavailable to claimants in termination appeals. However, the latter claimants will usually have requested continuation of their monthly benefits pending the ALJ's decision (as they may need to do to survive), so there will be no back benefit award for any period of time prior to the ALJ's ruling, and none at all if it is favorable. To hire paid counsel, therefore, termination claimants have no option but to arrange for payment out of their meager monthly Social Security (or SSI) checks.

Legal aid societies like ours used to be readily available to Social Security and SSI claimants for representation in their appeals, and we, at least, have always waived any fee to which we would otherwise be entitled for that work. However, the Committee is probably quite aware of the major reductions in federal funding that the Reagan Administration has obtained for legal services programs. We, like most other similarly-affected programs, have had to cut back significantly on our representation of clients in favor of such services of the private bar as have been able to be arranged. Though our volunteers have been generous in providing their services to some of our clients whom we can no longer represent, the same is far less true in other parts of the country and the state of Georgia. Furthermore, this does not deal with the problem of those Atlanta residents who, because they may not not be aware of the availability of such volunteer services, forego appeals from termination decisions or attempt unsuccessfully to represent themselves.

V. CONCLUSION

The Atlanta Legal Aid Society strongly supports the efforts of this Committee to restore fairness and humanity to an afflicted Social Security disability determination system. Five major problem areas stand out most clearly on the basis of our experience. The first and perhaps broadest, is the implementation and enforcement of standards for evaluation of mental impairments (including pain and substance addiction), to make their evaluation more rational and less affected with prejudices against claimants suffering from them. The second is the improvement of the consultative medical evaluations purchased by Social Security to help determine the medical condition of applicants. The third is the like improvement—even more needed in this state—of the quality and accuracy of disability determinations done by state agencies, often without proper knowledge of the governing criteria for making their decisions. The fourth is the misuse of the Sequential Evaluation Process, at two levels, to make quick and incomplete determinations of claims. Finally, the agency's refusal to attach any significance to its previous determination of eligibility for benefits where the question of termination arises, as by a "medical improvement" or similar standard derived from oridinary res judicata principles.

Despite the length of these remarks (and as perhaps demonstrated by that very length), ALAS has not had as much time to prepare its presentation to this Committee as it would have liked. Particularly in the area of submitting or refining proposals for Congressional action to redress the problems we and the Committee have identified, or to comment further on any solutions under consideration by the Committee, we stand ready to assist in any way possible if the Committee wishes to request such assistance.

We thank the Chairman and the other members of this Committee for allowing us the opportunity to present our views on this occasion, and for its concern for the tens of thousands of citizens, many of them our clients, whose lives stand to be improved by the Committee's actions.

ATLANTA LEGAL AID SOCIETY, INC.,
Atlanta, Ga., April 26, 1984.

Mr. JOHN J. SALMON,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. SALMON: In accordance with your April 19 letter, I am enclosing herewith the copy of the transcript of my testimony before your Social Security Subcommittee last March 23, with corrections of editorial and typographical errors that I have made on it. I did not make any corrections to Larry Gordon's testimony, which was also included in the document you sent me.

In my written statement, at pp. 35-7—referred to in passing at page 106 of the oral testimony—I expressed concern that a section of the part of the bill dealing with the "medical improvement standard" might inadvertently be read to seriously undercut the entire thrust of that aspect of the bill. At the time my testimony was prepared I was somewhat tentative in this concern, since I did not then have before me the actual text of the bill (but only a summary). Now that I have the text itself (which I obtained on the day of the testimony), I see that my concern were justified, and therefore wish to speak a bit further on the point. The specific language appears in two places in the text of the bill: Section 101(a), creating new Section 23(f)(3) of the Act, and Section 101(b), creating new Section 1614(a)(5)(C) of the Act (pp. 5, lines 3-9, and 8, lines 17-25, of the bill as printed).

In each instance (the first for OASDI or regular Social Security disability benefits; the second for SSI disability benefits), the section permits termination of benefits,

notwithstanding a failure to prove medical improvement, where there is "substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity."

For reasons that I will explain, I fear that selective use of the above language could make a hole in the "medical improvement standard" generally provided for, that would be nearly big enough to swallow the rule.

If some of the "or" alternatives are eliminated from the above text, it provides as follows for at least one set of circumstances under which existing benfits payments may be terminated. This would occur where there is "substantial evidence which demonstrates that, as determined on the basis of new . . . evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision."

It is the "new evaluations" possibility that concerns me, particularly in light of the problems described elsewhere in my testimony about the variable quality of Social Security consultative medical examinations, which are routinely performed at the time of proposed terminations of existing recipients.

Both the *Simpson* v. *Schweiker*, 691 F.2d 966 (11th Cir., 1982), and *Shaw* v. *Schweiker*, 536 F.Supp. 79 (E.D.Pa., 1982) cases explain very well the important reasons why a medical improvement standard is necessary in disability termination cases. Medicine is at least as much an art as a science, and it is a field in which reasonable competent experts may often differ in their conclusions on a given set of facts. Both of the two cited courts held that once a favorable decision has been reached by Social Security, it would be unfair (and inconsistent with *res judicata* principles) to have that decision reversed based merely on the happenstance, or "whim," of the claimant's being before a different individual making the ultimate decision than he or she was the first time around.

Given the facts that (1) consultative examination reports are usually not as reliable as those coming from the claimants' treating physicians, and (2) at least some consultative physicians are inclined to lean regularly in the direction of unfavorable disability assessments, it is almost a foregone conclusion that in all but the most "open and shut" cases, if the Secretary sends a recipient to enough new "consultative examinations" over the years, she is going to hit on a doctor who views the claimant's condition less pessimistically than did some other doctor who submitted evidence in the past. This will seldom if ever be because the latest consultative physician finds something professionally wrong with the earlier doctors' assessments or judgments, but rather only because the newer physician happens to take a less sympathetic view of the evidence than the older one did. This is precisely the unfairness that led to the enunciation of the "medical improvement" standard in the first place.

As shown in my edited form of the bill's provision on this point, it allows the Secretary to terminate benefits solely by securing a "new evaluation" that concludes that the claimant's impairment "*is* not as disabling as it was [formerly] considered to be" (emphasis supplied), even though no improvement from the earlier time to the later be shown. I am afraid that criterion would be satisfied by *any* new consultative report that states that the claimant is now able to engage in some substantial gainful employment, even if (as is almost universally the case) it does not even mention the existence of the earlier reports. (Nothing in the law even requires that the new doctor have had access to the old reports.)

As I see it, there are only four predicates upon which a newly-retained physician might logically base a conclusion that a claimant's present level of impairment is not as disabling as it was formerly considered to be, i.e., does not preclude the claimant from engaging in all substantial gainful employment. First would be a finding that the condition had improved from the earlier time; that is a fair test, but is not covered by this section, which covers new evidence that does not find such improvement. Second would be that a new or improved test was administered that was not done by, or available to, the original doctor; however, again, that is covered in a different section. Third, the new doctor might believe that the older evidence reflected conclusions that were not medically correct on the basis of the information shown to be before the original doctor at that time, or on the basis that he did not do further tests or make further observations necessary to reach the conclusion that he drew. Stated another way, it would require the new doctor to find that the old doctor had made some type of professional error in reaching his conclusion. If that is what the section under discussion required, then it, too, would cause no problem.

The fourth and final predicate would be that the second doctor is simply reaching a different reasonable conclusion based on the same observations or tests previously evaluated, merely because his reasonable professional judgment is different (and more harsh) than was the former physician's. That is the possibility that, in my judgment, opens up under the section in question.

We strongly recommend that if the language here under discussion is to be retained in any form (and it could quite reasonably simply be eliminated), it be altered so that it brings the situation involved into the third of the above four possibilities rather than the fourth. This would require that the new doctor actually evaluate not only the claimant, but also the professional opinion about the claimant that was relied on by Social Security when they first granted benefits. Unless the new doctor is willing to say not say not simply that his view of the matter is different from the equally reasonable view of the earlier doctor, but instead that the earlier doctor's opinion was wrong for some medical reason, then the mere fact that the "new evaluation" is more recent than the old evaluation ought not to be a reason for allowing termination of reasonably-granted benefits.

One way of accomplishing the suggested result would be to redraft the language of the section of the bill under discussion to something like the following:

"Substantial evidence which demonstrates that the individual is able to engage in substantial gainful activity on the basis of either (a) new or improved diagnostic techniques that measure the individual's medical condition in a more accurate manner than was available at the time of the earlier evaluation, or (b) new evaluations that show that the evaluations on which the original benefits grant was based were medically inaccurate, either because of professionally incorrect analysis of evidence then before the physician making the earlier report, or because of such physician's failure to perform all tests then necessary to make an accurate evaluation of the condition.

"Such evidence, to qualify as 'substantial' under this paragraph, must (a) specifically refer to and discuss all evidence upon which the earlier award of benefits was made, and (b) if relying on new or improved diagnostic techniques, explain what such techniqus were used and how and why they produced a more accurate result than the older techniques, and (c) if relying on a conclusion of medical inaccuracy of an earlier report, explain in detail why such report was inaccurate, and in what respect."

I imagine that there are plenty of other ways to cover the same ground with different language—the above is only one suggestion.

In conclusion, I believe that a change similar to the above is necessary if the Congress intends to accomplish what Sections 101 and 102 of the bill say, namely, establishment of a reasonable sort of "medical improvement" standard for use in termination cases. If some such change is not made, I fear that not only will Congress's intention be frustrated, but also that existing law on the subject from the federal courts may itself be undercut by a court interpretation, however wrong, that Congress intended to reverse or limit those rulings by the legislation in question.

Please feel free to telephone me to discuss the above matter further if I have not succeeded in explaining it to your satisfaction, or for any other reason.

Very truly yours,

KENNETH G. LEVIN,
Attorney at Law.

Mr. FOWLER. Mr. Lawrence R. Gordon, proceed as you will.

STATEMENT OF LAWRENCE R. GORDON, AFFLECK & ASSOCIATES, P.C., DECATUR, GA.

Mr. GORDON. Congressman Fowler, Congressman Jenkins, I first want to thank y'all for inviting me to appear on my personal behalf, and on behalf perhaps as a representative of the private bar who represent social security claimants. When asked to initially attend this subcommittee hearing, I really felt compelled to come.

I think there is a lot of talk within the private bar as to these problems, and certainly there are some comments I wish to make as well as to answer questions, perhaps presenting some information as to the financial impact on people who are being represented by members of the private bar.

Prior to entering private practice, I had been the staff attorney to the chief administrative law judge, Phillip T. Brown, in Arlington, Va. After that I worked with the local office here of hearings and appeals and worked under Albert Feldman, whom you heard from earlier. I have now entered private practice. Representing social security claimants for approximately 9 months, I feel that I am in an excellent position to comment on the issues of today's hearing.

Clearly, no one today can question the need for review. The problem is the nature of the review that is being done. Too often individuals are removed from the disability rolls, because a particular condition may have improved. This may be true; however, it has been my experience to see many claimants who were initially placed on disability for a particular medical problem to develop another severe medical problem in that interim period prior to review.

It is not unusual to find individuals who had been the major breadwinner, major wage earner in a family to undergo significant—he might have been the major disciplinarian, and so forth—to undergo significant emotional changes, just from being on disability. There are many people who would much rather be out working, getting more money than being on disability, and their emotional makeup has been affected. As a representative of these type individuals, our office has been fortunate to be able to recognize these problems, and either arrange ourselves to have a consultative psychological or psychiatric evaluation on our own or have the Social Security Administration obtain one if our claimant is financially unequipped to procure one himself.

The State agency—and I have called it the State disability adjudication section—applies too strict a standard in reviewing these cases. Many of these individuals should not have to reach the administrative law judge level in order to have their benefits reinstated. I have enclosed a copy for your use which shows the degree of error that is made in such cases.

In this particular case that I am enclosing, a consultative psychologist had been arranged to examine this individual for the disability adjudication section and found very significant problems with this individual, and I think of such severity that his disability should have been continued at the earliest level. However, this report, after undergoing the scrutiny and review at the administrative level, primarily at the initial reconsideration level, resulted in significant dilution of that report. And when this fellow got his notification, it sounded like he did not have a psychiatric problem at all, and the notification I have enclosed in there from the lower levels confirm that.

Unfortunately this happens all too often.

If I may depart from my written comments for just a moment, we have had a situation where an individual was being examined for psychiatric purposes. They send a notice for him to appear for a psychological examination and he could not appear because he was in psychiatric hospitalization—inpatient psychiatric hospitalization because of the severity of his case. They waited a few weeks and they sent him another notice for an examination. He had gotten out, but 2 weeks later he was placed back in psychiatric inpatient

hospitalization for another 4 weeks, and was unable to attend that appointment. So finally he got out again, and they sent him a third notice and he did not show up for the appointment. His benefits were terminated.

His diagnosis was schizophrenia catatonic state. This man was wavering in and out of psychotic states and they cut him off.

We recently had a hearing before Judge Feldman and he had a psychiatrist testify at that hearing, and Judge Feldman asked the psychiatrist if this individual with his type of mental illness could be held accountable for not showing up for his evaluation and the psychiatrist responded that he could not be held accountable.

So these are the type of things, it seems to me, that it is almost a callous approach. If you are looking to take off somebody, or looking to examine an individual, and he is in psychiatric in-patient hospitalization, what better evidence is there to tell you that this man is still disabled.

They went on with their review and eventually knocked him off, and he did not appeal from it for 2 years, and had to file a new application, because he was not the type of individual with the same background, so to speak, that would have understood the appeal process anyhow.

Another unfortunate circumstance is the individual that will appear before an administrative law judge, who may be one of the more conservative judges in the region, if not the Nation—what happens is that an individual who would ordinarily be found disabled by six out of the seven judges in the Atlanta office, or maybe 30 out of 31 offices of judges in the region, would now be found not disabled based solely on a different approach.

Not any different evidence, just a different approach to handling the case, and I have previously been given this H.R. 3755, which notes the medical improvement and requirements; this is a very strong reason why this has to occur, because otherwise it is just at the whim of which judge draws the case whether that individual's disability is continued or not. So medical improvement is a wise understandable policy and I hope it is enacted into statutory legislation.

However, it is still quite feasible for an individual to still be found not disabled when a different administrative law judge is reviewing the claim. In many ways, it would be most preferable to have the same ALJ review the termination case. He is already aware of the case before him—it may have been a couple of years, but it is much more likely that that individual has a better exposure to the administrative process.

If I can again depart from my written comments. Judge Feldman mentioned the Bellmon review. We have experienced this and it is, indeed, I think 100 percent review, and we will get a client who was being cut off. We win the case at the ALJ level and the person was found disabled by the ALJ because of the psychiatric impairment, and 4 to 5 weeks later they are being notified from Arlington, Va., that the case should be reversed, and I cannot tell you—it is one thing from the ALJ level—I cannot tell you the effect that has on any individual, particularly one that has emotional problems, to get that type of a letter.

It just really shakes them up and we are fortunate we did not lose this individual. It was of that type of severity. When you get that type of letter and you go up to that level and they just drop you down like that, it causes an emotional trauma to these individuals.

As to the financial impact on the claimants who are represented by members of the private bar, most lawyers generally charge 25 percent of the contested benefits. Contested benefits would be benefits involved from the date that social security says you are not entitled to any benefits through the date of the favorable final decision. All benefits for future months generally would go to the claimant 100 percent, so that is the contested period.

Now back a couple of years ago there was too long of a delay in processing these termination cases and SSA—and I think properly so, sped up the review process so that people did not have to wait that long; but members of the private bar, being that the 25 percent was now being reduced significantly where oftentimes 25 percent may only be $50 or $60, if the review got sped up fast enough to make only one month would be—most lawyers have had to charge a minimum of $500 fee or 25 percent, whichever is greater.

Now, many times the Social Security Administration, who has the final say-so, will cut back that fee. They have the authority to do that. They will review the case at the administrative law judge level, and that particular ALJ would look at the case, at the number of hours that the representative worked on the case, and the input is not always good—maybe not—submitting information, or providing information that social security already had. The administration can sometimes cut back that lawyer's fee, and naturally if the case is not won at all, most lawyers would not get a fee whatsoever.

One of the problems that I see, and there is nothing that is addressed in H.R. 3755, but there are situations where people can charge and get approved a fee for representing a claimant even if the claimant loses his case, and there have been instances where the Social Security Administration has approved such a fee.

I think that particular type of situation really causes a financial burden, almost devastating to an individual who has to additionally pay out funds from I do not know where in the situation where they do not win benefits. Ordinarily, if they do win, the 25 percent would be paid to the lawyer from the Social Security Administration.

Now, as a practical approach, if the individual is getting their benefits continued, the general procedure that most lawyers do is they have the individual bring in 25 percent of their monthly check and place it in an escrow account, to be paid—if the case is won and social security approves that fee, then it would then be placed in the lawyer's operating account.

If it is not approved, or if it is reduced or if the case is lost, it is sent back to the claimant. I think most of the lawyers that I know that represent social security claimants are really conscientious and honest in this regard.

However, I do think the contingency arrangement is the easiest financially for the social security claimants.

Another practical approach is when the claimant is notified that the Social Security Administration has determined that disability no longer exists, and instead of appealing that the individual takes it for what it is worth and tries to go back to work. Since the appeal time has expired, and let us say, they injured themself because of their attempt, they must make new application, and we do not think the administration at this time really treats it any different as a new application. I think something has to be done to consider the sequence of events that led to such application.

You should not really be penalizing the individual who is motivated and attempted to go back to work, and may work for 2 or 3 months, and cannot hack it, and has to really go back on disability. They should be given special consideration, similar to the trial work period, allowing the ones who attempt to return to work while still on the disability roles.

Another problem is your basic social security claimant is not well educated. Few of the social security claimants have a high school education.

Most of them have what is defined in the Social Security Administration as a limited education. Oftentimes these claimants are examined by consultative physicians, and then receive notification from the Administration that the medical evidence now shows that they can do work, lift 50 pounds, or do anything.

This is deceiving social security claimants when this happens. They believe—they have gone to a doctor that social security has set up for them, and they get a letter back from social security saying the medical evidence says you can lift 50 pounds, so you can go back to your prior work.

They come to our office, and we will say why did you get your medical disability cut off and they will say the doctor said I can lift 50 pounds or go back to work. The doctor did not tell them that.

In one of the notations that I have put in there, you will see—it is not really clear who is making that determination, but because they are not represented, they do not have anyone to explain and they feel that the doctor said this—they try to go back to work and really exacerbate their condition.

I think that all that needs to be done in this is a honest approach. If you are going to say a certain evaluation has shown a certain ability, then have the doctor say it. If he does not say it, then make it clear to the individual who got that letter, that it was not the doctor who said it.

It was the social security adjudicator that reached that conclusion or it might have been a physician on the staff of the disability adjudication section that reached that conclusion, but too often, they think it is a medical opinion that they can now return to work and lift a certain amount of weight, and it is entirely improper.

Based on my experience, and I feel that the private bar is providing a service to these claimants, our experience allows us to obtain the type of comprehensive medical or psychological reports, including the physical capacities evaluations and residual functional capacity responses that Judge Feldman mentioned earlier, needing to be performed.

We are able to obtain these and these provide a much clearer picture of the individual's condition. The forms ordinarily sent to the treating physicians generally do not sufficiently inquire as to the status of the claimant's condition. Representatives are able to largely erase this inadequacy.

This, I might add, is a partial reason why—you asked earlier why there is such a large percentage of reversals at the ALJ level, I think part of this is from the representatives not—not just the private bar, but legal aid and other private organizations that represent people—we are able to get those records, get these physicans to commit themselves to a definite view, and oftentimes it is enough to change the decision before the ALJ.

Finally, the claimants who undergo the termination process benefit from representation. This oftentimes provides a source of strength and security to their situation. For many unrepresented claimants, the process involves much hopelessness and helplessness.

I might add that many members of the private bar are members of the Atlanta Volunteer Lawyers Foundation and routinely accept cases involving social security claimants and representing them at no charge.

With very few exceptions, these representatives are conscientious, caring, and hard working. Their concern over the current termination policies is not based on a financial standpoint, because clearly the current policies would provide us with more claimants and more clients to deal with.

If you really look at it, if they continue to knock these people off this way, it would give us more business, and we are not here suggesting that that is at all part of our—that we just want to see right corrected—I mean wrong corrected and right reinstated.

It is our concern that fairness be restored to the termination process. It appears that obviously if so many individuals are initially informed that their benefits are being terminated and then have them restored through the administrative process, there has got to be too strict of a medical application being used in these cases. Based on my experience, the fault lies largely at the initial and reconsideration levels.

The private bar is, indeed, hopeful that the necessary corrective actions can and will be taken, and I believe that all of us here today stand for one basic principle, all agree with one thing, there must be changes.

[The prepared statement follows:]

STATEMENT OF LAWRENCE R. GORDON, AFFLECK & ASSOCIATES, P.C., DECATUR, GA.

When asked recently whether I would be willing to make an appearance before this Committee as to the current policy in regard to termination of disability benefits, I felt compelled to come before this group to render what I believed to be not only my personal opinion, but also the opinion of other members of the bar who represent Social Security claimants.

Prior to entering private practice, I had been the Staff Attorney to the Chief Administrative Law Judge, Philip T. Brown, and had worked as a Staff Attorney with the Office of Hearings and Appeals in Atlanta, Georgia. I had the pleasure of working with Administrative Law Judge Albert P. Feldman for approximately four years. Having now entered private practice and representing Social Security claimants for approximately nine months, I feel that I am in an excellent position to comment on the issues of today's hearing.

Clearly, the Social Security Administration must regularly review certain claimants to insure that their disability is still continuing. It is that review that has become the problem. Too often, individuals are removed from the disability roles because a particular condition may have improved. However, it has been my experience to see many claimants who were initially placed on disability for a particular medical problem develop another severe medical problem. It is not unusual to find individuals who had been the major wage earner in a family to undergo significant emotional turmoil and internal changes. As a representative of these individuals, our office has been fortunate to be able to spot these impairments, and either obtain a psychological or psychiatric evaluation on our own or convince the Social Security Administration to have one performed if the claimant is unable to afford [illegible]e privately.

The State Disability Adjudication Section applies too strict a standard in reviewing these cases. Many of these individuals should not have to reach the administrative law judge level in order to have their benefits reinstated. I have enclosed a copy of a case that our office handled which clearly shows the degree of error that is made in the review of such cases. The consultative psychologist that the Disability Adjudication Section had arranged clearly found such significant problems that this individual should have had his disability continued at the earliest level. However, this report, after undergoing the scrutiny and review at the administrative level resulted in a significant dilution of the severity of that report. Unfortunately, this happens all too often.

Another unfortunate circumstance is that the disabled individual will appear before an administrative law judge who may be one of the more conservative judges in the region. What happens is that an individual who would ordinarily be found disabled by six out of the seven judges in that office would now be found not disabled based solely on a different approach. It is recommended, as the Eleventh Circuit Court of Appeals has held in *Simpson* v. *Schweiker*, 691 F. 2d 966 (1982), that disability benefits cannot be terminated unless there is evidence of medical improvement. This is a wise and understandable policy. It should be enacted into statutory legislation. However, it is still quite feasible for an individual to still be found not disabled when a different administrative law judge is reviewing the claim. In many ways, it would be most preferable to have the same administrative law judge review the termination issue.

As to the financial impact on the individual, those who are represented by members of the private bar are generally charged 25% of the contested benefits. Contested benefits would be benefits involved from the date that the Social Security Administration is saying that the individual is not entitled to further benefits through the date of the final favorable decision rendered by the Social Security Administration. Because of the speed in which these cases are being heard at the administrative law judge level, it has now resulted in most practitioners charging a minimum fee of approximately $500.00 for representing an individual in a termination case. The Social Security Administration still retains final authority as to how much a fee can be approved. This prevents a lawyer from obtaining a sizeable fee in a case in which little impact was made by such efforts.

Generally, these cases are taken on a contingency basis, in which no fee is earned if the case is unsuccessfully decided. Nonetheless, there is no current prohibition to a lawyer charging a fee if the case is lost. Still, the fee must be approved by the Social Security Administration. There have been instances in which such a fee has been approved. It is in these situations, where an individual has to pay a fee in which his case was not won, that causes the most financial difficulty for a claimant. Generally, if the case is won, the claimant will be paying his representative out of the past due benefits that are reinstated. If the claimant was receiving benefits all along, most lawyers try to have the claimant submit 25% of the benefits for each month until the final decision is reached. If the decision is unfavorable, such funds are removed from the escrow account and returned to the claimant. It must be remembered that lawyers do represent many claimants which end in an unfavorable decision and no fee. However, I think the contingency arrangement is most desirable by all.

Other financial impact is the loss of specifically arranged housing. For some, their ability to survive financially is at stake. Many are already being hounded by creditors, are faced with the loss of necessities. In rural communities that cannot afford the luxuries that are made available to those in urban communities, the effects are even more telling. These individuals have very limited social services available. Unfortunately, all of this may still occur for those people that are no longer disabled, and legitimately are not entitled to disability benefits.

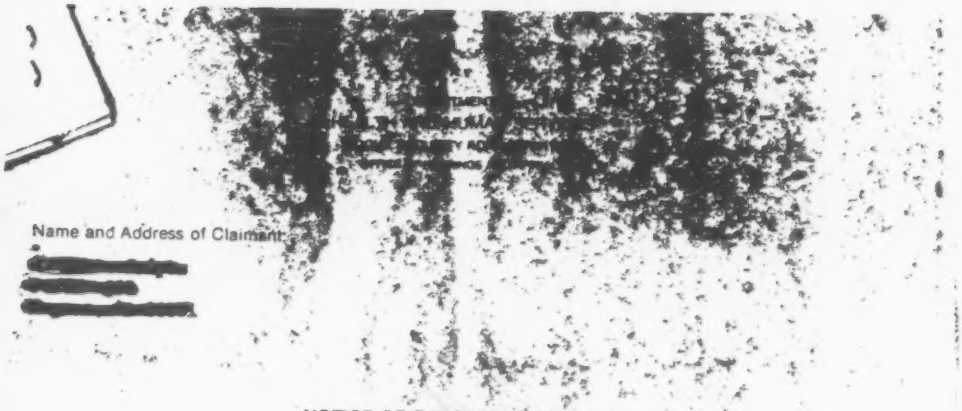
One of the most unfortunate situation is when the claimant is notified that the Social Security Administration has determined that disability no longer exists. Instead of appealing the case, they attempt to return to work and they reinjure themselves. Since the appeal time has expired, they must file a new application, and the Administration does not essentially consider the sequence of events that led to such application. This must be corrected. People who do not appeal their terminations, attempt to work and are unsuccessful, should be given special consideration, similar to the trial work period allowed for those who attempt to return to work while still on the disability rolls.

In the termination process honesty is a must. Many claimants are examined by a consultative physician and then receive notification from the Administration that the medical evidence now shows that they can do past work, medium work, lift 50 lbs, stand and walk 6 of 8 hours, etc. and that they are no longer disabled. They believe that such conclusions were made by the examining physician. This is not so, but they do not realize this. They often do not have a regular physician, and thus take the Administration's conclusion as the truth, and they do not appeal from this determination. The notification must be more explicit that the conclusions are not made by a examining physician.

Based on my experience, I feel that the private bar is providing a service to these claimants. Our experience allows us to obtain the type of comprehensive medical or psychological reports, including the physical capacities evaluations and residual functional capacity responses, that provide a clear picture of the individual's condition. The forms ordinarily sent to the claimant's treating physician generally do not sufficiently inquire as to the status of the claimant's condition Representatives are able to largely erase this inadequacy.

Finally, the claimants who undergo the termination process benefit from representation. This often times provides a source of strength and security to their situation. For many unrepresented claimants, the process involves much hopelessness and helplessness. The private bar often represents claimants without charge. With few exceptions, these representatives are conscientious, caring, and hard working. Their concern over the current termination policies is not based on a financial standpoint, since the current policies would only provide them more clients. It is our concern that fairness be restored to the termination process. Obviously, if so many individuals are initially informed that their benefits are being terminated and then have them restored through the administration process, there must be a too strict medical application being used in these cases. Based on my experience, the fault lies largely at the initial and reconstruction levels.

The private bar is hopeful that the necessary corrective actions can and will be taken. I believe that all of us here today stand for one basic principle, to wit: there must be changes.



Name and Address of Claimant

[redacted]

NOTICE OF FAVORABLE DECISION
PLEASE READ CAREFULLY

The enclosed decision is favorable to you, either wholly or partly. If you are satisfied with the decision, there is no need for you to contact the hearing office or the Social Security office. You will be notified as soon as action on the decision has been completed.

If you disagree with the decision, you have the right to request the Appeals Council to review it within 60 days from the date of receipt of the notice of this decision. It will be presumed that this notice is received within 5 days after the date shown below, unless a reasonable showing is made otherwise. You (or your representative) may file a request for review at your local Social Security office or at the hearing office, or you may write to these offices indicating your intent to request review. You may also mail the request for review directly to the Appeals Council, Office of Hearings and Appeals, SSA, P.O. Box 2518, Washington, D.C. 20013.

The Appeals Council may, on its own motion, within 60 days from the date shown below, review the decision, which could possibly result in a change in the decision (20 CFR 404.969 and 416.1469). After the 60-day period, the Appeals Council generally may only reopen and revise the decision on the basis of new and material evidence, or if a clerical error has been made as to the amount of the benefits or where there is an error as to the decision on the face of the evidence on which it is based (20 CFR 404.988 and 416.1488, 42 CFR 405.750 and 405.1570). If the Appeals Council decides to review the enclosed decision on its own motion or to reopen and revise it, you will be notified accordingly.

Unless you timely request review by the Appeals Council or the Council reviews the decision on its own initiative, you may not obtain a court review of your case (section 205(g), 1631(c)(3), or 1869(b) of the Social Security Act).

This notice and enclosed copy of decision mailed:

September 15, 1983

Name and Address of Representative

Larry Gordon
One West Court Sq. Suite 4C
Decatur, GA 30030

Form HA-L502-U7 (9-82)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

CESSATION OR CONTINUANCE OF DISABILITY OR BLINDNESS
Unit 12 DETERMINATION AND TRANSMITTAL

DESTINATION: DO [X] PSC [ ] DAB [ ] ODO-CO [ ] DIO [ ]

1 SOCIAL SECURITY NUMBER: [redacted]

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing public law 89-233.

2 A. NAME OF PAYEE (IF ANY)

B. NAME OF DISABLED OR BLIND INDIVIDUAL: [redacted]

C. ADDRESS: [redacted]

3 WE'S NAME (IF CDB OR DWB CLAIM)

4. DATE OF BIRTH: 8-27-32

5 DATE DISAB BEGAN: 12-09-74

6 DO ADDRESS: PO Box 6609, Marietta, GA 30065

7 DO AND DDS CODES: 619 110

8 TITLE II - DIB [X] FZ [ ] DWB [ ] CDB [ ] CRD [ ] TITLE XVI - DI [ ] DS [ ] BC [ ] BI [ ] BS [ ] BC [ ]

9 UPON CONSIDERATION OF ALL FACTS, IT IS DETERMINED THAT THE APPLICANT'S DISABILITY

A [X] CEASED 08-82 PD OF DISAB TERM AT THE CLOSE OF THE LAST DAY OF 10-82

B [ ] IS CONTINUING

C [ ] IS BLINDNESS AS DEFINED IN SEC 216(i) AND
(1) [ ] WE NOT DISABLED FOR CASH BENE PURPOSES SINCE _____
(2) [ ] BENE TERM [ ]
(3) [ ] WE UNDER DISAB FOR CASH BENE PURPOSES SINCE _____

10 UPON CONSIDERATION OF ALL FACTS, IT IS DETERMINED THAT

A [ ] DISAB CEASED _____ STATE PLAN LAST MET _____
B [ ] ELIG TERM AT CLOSE OF LAST DAY OF _____
C [ ] DISAB CONTINUES
(1) [ ] MEETS FEDERAL CRITERIA
(2) [ ] MEETS STATE CRITERIA
DA or A [ ] (DOES) [ ] (DOES NOT) CONTRIBUTE TO FINDING
D [ ] BLINDNESS CEASED _____
(1) [ ] INDIV NOT DISABLED/ELIG TERM AT THE CLOSE OF THE LAST DAY OF _____
(2) [ ] INDIV DISABLED/ELIG CONTINUES
E [ ] BLINDNESS CONTINUES

BASIS FOR DETERMINATION

11 DISABILITY/BLINDNESS CEASED ON SHOWN DATE BECAUSE
A [X] IMPAIRMENT NO LONGER OF SUFFICIENT SEVERITY TO PREVENT SGA
B [ ] NO IMPAIRMENT FOUND BECAUSE OF FULL-TIME UNRESTRICTED WK
C [ ] ABILITY TO ENGAGE IN SGA DESPITE IMPAIRMENT - TWP COMP
D [ ] ABILITY TO ENGAGE IN SGA DESPITE IMPAIRMENT - NO TWP
E [ ] NO IMPAIRMENT - TWP COMP
F [ ] WHEREABOUTS UNKNOWN
G [ ] FAILURE TO COOPERATE
H [ ] OTHER (EXPLAIN IN REMARKS)
42E8-U6

12 REASON FOR CONTINUANCE
A [ ] IMPAIRMENT DISABLING - NEW MED EVID -NO WK ACTIVITY
B [ ] IMPAIRMENT DISABLING - NEW MED EVID - WK NOT EVAL
C [ ] WK NOT SGA - IMPAIRMENT DISABLING - NEW MED EVID
D [ ] WK NOT SGA - NO MED ISSUE - NO NEW MED EVID
E [ ] STAT BLINDNESS/TITLE II BENEFITS CEASE
F [ ] TITLE XVI BLINDNESS TERM /DISAB BEGINS
G [ ] OTHER (EXPLAIN IN REMARKS)

13 [X] CHECK IF SSA-831-U5 IS USED. (USE SSA-834-U5 FOR EVIDENCE AND REASONING)

14 WHY INVESTIGATION WAS MADE
A [ ] MED RE-EXAM DIARY
B [ ] TWP DIARY MATURED
C [ ] EARNINGS POSTED - MED RE-EXAM SET
D [ ] EARNINGS POSTED - NO MED RE-EXAM
E [ ] VOL REPT OF RETURN TO WK - MED RE-EXAM SET
F [ ] VOL REPT OF RETURN TO WK - NO MED RE-EXAM
G [ ] VOL REPT OF MED IMPROVEMENT
H [ ] STATE VR REPORT
I [ ] PFL REVIEW
J [X] OTHER (Specify in Remarks)

15 OTHER SNT
[ ] TITLE II
[ ] TITLE XVI

16 VR ACTION
SC IN: A [ ] SC OUT: B [ ]
PREV REF: C [X] REJ: D [ ]

17 DIAGNOSIS
PRIMARY: dysthymic disorder
CODE NO:
OTHER:

18 DIARY
TYPE:
MO./YR.:
REASON:

19 [X] RECON [ ] HEARING [ ] REOPEN

20 REMARKS
14 J. Pointe Reviews Case This revises determination dated 9-8-82 DIC 01/25/83
Brenda Jones/eb

21 DISABILITY EXAMINER (Signature): Brenda Jones — 22 DATE: 01-24-83 — 23 SECOND DISAB. EXAMINER — 24 DATE

25 REVIEWING PHYSICIAN: Financial Mgr — 26 DATE: 1-26-83 — 27 SECOND REVIEWING PHYSICIAN — 28 DATE

29 TYPIST: LOUIS RICCARDI, M.D. 04-362-3964 — 30 SSA REPRESENTATIVE — 32 SSA COMPONENT — 33 DATE

12-9-74; 8/82; 10/82

34 FOR PSC OBS USE

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Social Security Administration

FORM SSA 4258 U8 (8-80)

EXPLANATION OF DETERMINATION

Name of Claimant	SSN
[redacted]	[redacted]

The following reports were used to decide this claim: John Knox, M.D., Orthopedic CE of 7-27-82; Nick DeFilippis, Ph.D., Psychological CE of 7-26-82 and report of 11-5-82; G. D. Delimus, M.D., report of 12-1-82; Brawner Psychiatric Institute, report of 11-15-82 - 12-1-82.

We have looked again at all the information regarding this condition.

You were originally found to be disabled because of a back condition. You have indicated that you are also unable to work because of a nervous condition. Evidence in file indicates that you required a cervical fusion for a back problem. Present evidence indicates that you had good results from your surgery and no significant x-ray findings at present or other findings to indicate disability because of your back problem. The problem with your nerves has caused anxiety, tension, depression and some emotional withdrawal. However your mental condition is not of the severity to meet or equal the listings for disability.

Medical evidence shows that you have the ability to do work that requires little or no training.

The determination on this claim was made by an agency of the state and not by the individuals or agencies who submitted reports.

CONSULTATIVE

SOUTH COBB MEDICAL CENTER

1399 ~~1600~~ South Cobb Drive
~~Suite 200 A~~
Marietta, Georgia 30060
Phone: (404) 422-3100

PSYCHOLOGICAL EVALUATION AUG 0 5

NAME: [redacted]
AGE: 49
DATE OF EVALUATION: 7/26/82

REFERRAL QUESTION: The client was referred by [redacted] of the Disability Adjudication Section for an evaluation of intellectual and emotional functioning to assist in disability determination.

BACKGROUND INFORMATION: The client was accompanied to the session by his wife. He reportedly has had two years of college, and worked in the restaurant business as a supervisor of a chain of restaurants for a number of years. He also has a history of having been a professional wrestler from 1950 through 1955. He was involved in an automobile accident in 1973 that caused him to quit work. He has five children who are reportedly all doing well.

The client's automobile accident in 1973 caused multiple injuries. I could not really get a clear indication of exactly what kind of problems were caused. I do know that he was not unconscious after the accident. He had some problems to his back which were corrected in a surgery in 1976. However, he stated that there was a lot of muscle damage that left his right arm very weak. At this time, he cannot use his right arm for lifting anything heavy or for doing anything for any extended period of time because it will just go limp on him. He is right handed. The client had an artificial eye in his right eye socket since he was 12 years old. This was caused by an accident in which a sort of sling shot backed fired into his eye. During the accident in 1973 the artificial eye was somehow damaged and he had surgery on it in 1974. He states that he still has some problems with his artificial eye. The client also reportedly is diabetic, but his diabetes is being controlled relatively poorly with diet. In addition, he stated that he has had numerous cuts and bruises caused by his wrestling and has stitches all over his body. Also, he was born of a forceps delivery, and has a rather severe scar in the right frontal area of his head.

The client reportedly had a very bad childhood. His step-mother reportedly put him down a good deal of the time, telling him that he would never amount to anything. His father was apparently very wealthy. He spent about 10 years living in a military academy, not even wanting to come come home during the summer. His wife reported that when he was working for the restaurant ~~business~~ he was a work alcoholic. He reportedly would work 100 to 110 hours a week. Every few years he would have to check into a hospital for what appeared to be just complete exhaustion. I wonder if these hospitalizations might have been partially due to depressive episodes.

The client apparently has been quite depressed ever since his accident and the realization that he was not able to work. He attempted suicide two times by taking over dozes of pills. The last suicide attempt was three years ago. He was in Cobb General Hospital in the psychiatric unit for depression on three occasions. The last hospitalization was also three years ago. He was under the care of a psychiatrist for a while, but has

not been seeing a psychiatrist recently because he refuses to see a physician or to take any medication. It is also significant to note that the client reports having had homicidal impulses towards his family. He reported to one psychiatrist that he thought that his entire family would be better off dead because he cannot take care of them anymore. The client denied ever abusing alcohol or drugs.

TESTS ADMINISTERED: Wechsler Adult Intelligence Scale-Revised;Bender Visual Motor Gestalt Test; Booklet Category Test; Minnesota Multiphasic Personality Inventory; Wechsler Memory Scale; Wide Range Achievement Test.

TEST RESULTS: On a standardized individual intelligence test the client obtained a score which places him in the Low Average Range of intellectual functioning (WAIS-R Full Scale IQ=88; Verbal IQ=92; Performance IQ=85). This level of functioning places the client at the 21st percentile in terms of his intellectual abilities when compared to like-aged peers. His best performances which were in the Average Range were on measures of vocabulary, arithmetic reasoning ability, practical and social judgement, and visual organizational ability. He performed in the Low Average Range on measures of general information, immediate auditory memory, verbal and non-verbal abstract reasoning ability, complex visual analysis, and psychomotor speed. It appears from these test results that there may have been some decline in intellectual abilities from what was an Average Range in the past. This decline appears to have occurred largely in the areas of reasoning skills and visual motor skills. Some difficulties in concentrating were also indicated. The age corrected subtest scaled scores from the Wechsler are listed below. Please note that a scaled score of 10 is Average.

Subtest	Scaled Scores
Information	7
Digit Span	6
Vocabulary	9
Arithmetic	11
Comprenension	11
Similarities	7
Picture Completion	7
Picture Arrangement	9
Block Design	7
Object Assembly	10
Digit Symbol	6

On a separate measure of visual motor functioning (Bender) the client's performance was Defective. He scored at a level that would be average for an 8 year old child. This is much lower than would be predicted on the basis of his IQ, and is consistent with the difficulties noted on the visual motor tasks of the Wechsler. This test score suggest that the client may have sustained some sort of organic brain dysfunctioning during the many physical traumas he has sustained during his lifetime. He can be expected to have some difficulty in performing tasks that require eye-hand coordination, particularly if these tasks must be performed quickly.

The Wechsler Memory Scale yielded a Memory Quotient of 86. The client was oriented to person place and time. He could name the president, past president, and governor but not the mayor. He recited the alphabet in 6 seconds and counted backwards from 20 to 1 in 15 seconds. He performed serial 4's from 1 to 53 in 29 seconds, but made one error. He was able to repeat 5 digits forward and 3 backward, a low average performance for a man his age. He had considerable difficulty in learning new word associations. His ability to recall both verbal and non-verbal material was mildly impaired. These test results suggest the presence of some memory problems, and support the client's description of his memory problems. It is difficult to tell if these problems are a

poor concentration skills or some organic brain dysfunctioning. It is quite possible that the memory problems are due to a combination of both of these difficulties.

The Booklet Category Test was administered to the client to assess problem solving abilities and to get further information concerning the possibility of organic brain dysfunctioning. The client performed at a Defective level on this test. He became quite frustrated during the administration of it, and I feel that these test results indicate that there may very well be some diffuse organic brain dysfunctioning present. At the very least, the client's problem solving abilities can be said to be very poor. Simple everyday matters that are readily confronted by the average person would be very stressful for this man. He can be expected to become quite anxious and agitated in the presence of such problems.

The client's personality testing was indicative of a significant emotional disturbance. Clients who obtain such test results are described as being depressed and express hopelessness, and pessimism. Symptoms of weakness and easy fatigue often occur. Difficulties in concentrating and thinking are common. These individuals have difficulties in expressing their emotions in any adaptive way. They are quite schizoid in their behavior. These clients tend to be guilt and worry ridden, generally fearful, and vulnerable to minimum threat. What others view as no more than an irritant is usually perceived by them as a major threat. They are described as being tense, nervous, trembling, sweating-all indicators of anxiety or fear. Inner conflicts about emotional dependency are frequent and emotional involvement of any sort poses threat. They withdraw and keep others at a distance. They view themselves as blame worthy people and express feelings of doubt and self-condemnation. Perfectionistic tendencies and compulsively meticulous behaviors occur. Indecisiveness is characteristic. Obsessional, ruminative preoccupations are commonly reported.

During the evaluation the client was cooperative and sociable. I felt that he was trying to do his best on all the tasks that were administered to him. I did not get any impression that he was faking. He was observed to be relatively obese, and stated that he has always been over weight. Actually, he reports that he has lost a good deal of weight in recent years. The client complained of being quite tense, having crying spells, having difficulty in concentrating, having frequent headaches, hearing ringing or buzzing in his ears frequently, and having difficulty in sleeping. He was noted to be relatively tense and mildly to moderately depressed. He cried at one point during the examination. His thought processes were logical and coherent.. I really didn't have any difficulty in conversing with him. He denied hallucinations or delusions, but his wife told me that he does hear sounds coming from the house at times. In fact, she told me that he recently told her that he felt that the house was haunted.

The client is reported by his wife to be quite impulsive. She states that she cannot trust him with money any longer because he will spend it foolishly. He use to be very conscientious about his use of money. He reportedly gets angry very easily, but this is not as much of a problem as it was in the past. He reportedly stays away from people as much as possible and will just get up and walk into his room and close the door when company comes over.

The client reportedly spends his typical day by spending some time planning to go back to work. He reportedly works on projects such as developing a new barbeque sauce, thinking that he will make a great deal of money if he perfects it. His wife seemed to think that some of this behavior is somewhat foolish, but she supports him in his working on these projects. He apparently doesn't really do anything that would cause any harm to anything by working on these. He does do a little yard work, but he cannot manage a hoe or dig. He does quite a bit of housework, and he does do a lot of cooking. He apparently cannot stand to be without a family member nearby.

He cannot stand to be around other people. He cannot drive anymore, and does not like to watch television for long periods of time. He cannot read much anymore because of his eye problem. He does try to keep up with the news by watching some television. He reportedly never had many recreational activities that he would engage in. He was, as noted above, a work alcoholic, and spent all of his time with his work. He does not do any shopping now because he cannot stand to be in stores where other people are around. He stated to me that he is very phobic of being in cars since his accident.

MENTAL STATUS: The client's daily activities are moderately to severely restricted. He simply cannot stand to be around other people because he fears that they are saying negative things about him. This makes him extremely anxious. He cannot stand to drive or even to be in a car for any length of time. He reported to me that he will sweat profusely when in a car and will be constantly worrying and baggering the driver. He cannot stand to be without a family member near by. His difficulty with his eye reportedly causes him to not enjoy reading anymore or watching television for long periods of time. He reportedly cannot use his right arm to do any heavy work or anything that requires using it for any length of time. This is somewhat inconsistent with the reports of his doing a good deal of housework and cooking, but perhaps he somehow manages to use his left hand when doing these tasks. He reportedly is not really experiencing any pain other than the pain in his false eye.

The client's interests are moderately to severely restricted. He does not enjoy reading anymore, and cannot stand to be around other people. He really never had a great many interests other than his work, and he is not interested in going back to work at this time. He reports having a poor memory, and this is supported by the test results. I feel that he might have some difficulty in performing any tasks that required memory skills. He seems to display poor reasoning and problem solving abilities, and tasks that require these abilities would probably be quite difficult for him. He cannot drive anymore.

The client's ability to care for his personal needs is not significantly impaired other than the fact that he cannot stand to be around people and cannot do any shopping. He was neatly and appropriately dressed, and reportedly can handle keeping himself clean and dressing and undressing himself. He also does quite a bit of housework and cooking.

The client's ability to relate to other people is moderately to severely impaired. He reportedly simply cannot stand to be around other people because of feelings that they are talking about him and because of the great anxiety that this causes him. His very poor problem solving abilities would probably cause him to become extremely anxious when confronted with difficulties in relating to other people. He seems to have a mild memory disturbance that might interfere with his ability to recall things that are said to him. He is said to be somewhat impulsive and easily angered. He is not having any homicidal impulses as he was in the past. However, I feel that this gentleman could probably become quite easily suspicious of others and that this might cause some difficulties for him. He does cry very easily. I do not feel that he is psychotic.

The client's reading abilities as measured by the Wide Range were at the 4.9 grade level. This is equivalent to a standard score of 101 and a percentile score of 53. His math skills were at the 3.6 grade level. This is equivalent to a standard score of 84 and a percentile score of 14. He all [illegible] with some fraction problems. He had considerable difficulty in working on the math portion of the Wide Range, and I feel that this indicates the presence of a significant anxiety. His reading skills support my contention that he was probably functioning in the Wide Range in the past. His reading skills are such that he would be able to profit from vocational training programs, although this would definitely require somewhat better concentration abilities. I did detect during the administration of the Wide Range

...e difficulty that he was having in focusing his eyes on the words on the page. For example, he would skip some lines while trying to read them.

IMPRESSIONS AND RECOMMENDATIONS:- [redacted] is a 49 year old white male who is currently functioning intellectually in the Low Average Range. This probably represents a decline from what was an Average Range of functioning. This decline appears to involve primarily the abilities of concentration and memory, reasoning and problem solving, and visual motor functioning. The test results support the presence of mild organic brain dysfunctioning that may be of a diffuse nature. The client presents with what appears to be a major psychiatric disorder that can best be described as a type of depression. I wonder if he has had bouts of depression in the past. I also wonder if he might have been having manic episodes in the past since he describes his work behavior as being almost indicative of such a syndrome. However, at this time there are no manic episodes present. The client also apparently has difficulties in the use of his right arm, is said to be a poorly controlled diabetic, and has difficulties with his vision.

I feel that this client probably needs to have further physical workups to determine the extent of the difficulties with his physical problems. He is rather severely emotional disabled at this time, in my opinion. I feel that he definitely requires further psychiatric treatment, though I really feel that his prognosis is probably only fair. However, with appropriate treatment he might be able to advance to the stage where he would be an appropriate candidate for vocational rehabilitation. The gentleman is certainly intelligent enough to benefit from psychotherapy if he were predisposed to enter into it. I do feel that there are many problems emanating from his childhood that probably are related to his current difficulties.

The client is able to handle is own funds, in my opinion. However, his wife does state that she prefers to handle the funds for him, and if this is agreeable for him, I see no reason why she should not do this. Thank you for referring this interesting gentleman to me. Please let me know if there is any other information I can provide concerning his case.

DIAGNOSTIC IMPRESSION: 296.82 - Depression with possible history of manic episodes.
294.80 - Organic brain syndrome, nonpsychotic, with mild memory loss, visual motor problems, and problem solving ability loss (tentative diagnosis).

Nick A. DeFilippis

Nick A. DeFilippis, Ph.D.
Clinical Psychologist

NAD/vw

CONSULTATIVE

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July 27, 1982

[redacted]
Disability Adjudication Section
200 Swanton Way, Suite 300
Decatur, Georgia 30089

RE: [redacted]
DX: Status post anterior cervical fusion, C-5-6, with residual right shoulder/arm pain.

HISTORY: This 49 year old white male was involved in an auto accident as a passenger on 12/9/73. His car was thrown 63' in the air causing severe damage. He ultimately came to an anterior disc fusion by Dr. Klaus and Kaufman in 1975. The fusion healed quite nicely, but there remains residual right shoulder and upper arm pain. This he is unable to get rid of. He states he last worked in 1973. He is currently taking no medications and only taking Vitamins. He has a cervical collar that he will occasionally wear. He has not had a Cortisone shot in years.

The patient continues having pain in the right shoulder and into the forearm. He states he has some weakness of the right hand. He has no other musculoskeletal problems. He did have to have two eye surgical procedures in 1976 because his right eye prosthetic bed was injured in the same accident in 1973. The patient states he is a former wrestler.

EXAMINATION: 5'6". 239 lbs. He has no obvious discomfort. Right eye is an obvious prosthesis. He moves his neck on command with flexion of 30 degrees, extension of 15 degrees and left and right 45 degrees. Tender in the right trapezius. Shoulder has full range of motion. No tenderness. There is no obvious atrophy in the upper extremities. At the deltoid insertion, the right arm measures 14", the left 13". Right forearm measures 11 3/4", the left 11 5/8". His right biceps reflex is only 1+ compared to the left at 2+. Both triceps reflexes seem to be 2+. He seemed to have weaker grip of the right hand despite the fact there is no atrophy in the right forearm or forehad. There is no obvious numbness in the hand. His spine otherwise was normal, flexible and pain free.

X-RAYS: Cervical spine: Show a solid fusion anteriorly at C-5-6. The neck is in a normal posture. The joints and disc above this fusion appeared normal on both. There are few anterior osteophytes at other levels and some calcification of anterior longitudinal ligament.

DISCUSSION: The patient probably is having some residual arm pain from his cervical spine. I agree with his assessment that probably nothing else can be done. I feel like he can work if he can avoid working overhead and avoid positions that would demand alot of neck flexion and movement. He will have to avoid heavy lifting and pushing with the right arm. He will also have to avoid high risk areas, not only for his arm and neck sake but also the loss of the right eye.

Chairman PICKLE. Does that complete your statement?

Mr. GORDON. Yes, sir.

Chairman PICKLE. Well, I thank you and I want to say to both of you gentlemen that I appreciate your comments and your suggestions. As chairman of the Social Security Subcommittee at this particular point, I am interested in trying to advance this bill, H.R. 3755, for passing both in the House and hopefully in the Senate.

Some of the suggestions you have made are an analysis of the overall operation of the social security program. This is helpful to us, and you should know that each one of the staff is going to be looking at the points you have made, and as we go along we might able to effect some of those changes.

What we hope to do now is to get this bill passed, and that alone will help to cure many of the problems you have mentioned, however, you have the medical improvement, the continued benefits at the ALJ level, and if we had these guidelines, it would cure many of the problems we have in the overall program, and I am glad to have your testimony as a part of the record.

I notice, Mr. Levin, that you must have finally gotten your typewriter working. You have your statement prepared now.

Mr. LEVIN. Yes, sir.

Chairman PICKLE. We will be glad to receive it if it is not too long. It must be fairly long or it would have gotten here earlier.

Mr. LEVIN. I was going to say I hope you will be glad to receive it if it is too long.

Chairman PICKLE. We will consider it. Do you have any questions, Mr. Fowler and Mr. Jenkins?

Mr. FOWLER. Mr. Chairman, I do not. I must apologize to you and my colleague, Mr. Jenkins, and to the remaining panel. I must leave now to receive some international visitors at the airport on the 1:25 plane, and they will be waiting for me, so I have got to run. But I guess I just echo what you have said. It has been very helpful to have these hearings.

I am very pleased with the support across-the-board for the legislation which we have worked an awful long time on, in dealing with very complex area that is made more complex because of the very human dimension, and I do want to thank all of you who have come to testify and bring us your insights. I will look forward to reviewing the complete record, and hope that we will have some good news before the House of Representatives next week, that we can take that message to the Senate which is that this is a problem which simply must be addressed and must be addressed in the proper way.

Chairman PICKLE. You are right, Mr. Fowler. I hope we can keep it on schedule. Mr. Jenkins?

Mr. JENKINS. Thank you for being here, and I will not ask any questions at this time.

Chairman PICKLE. Thank you, gentlemen, very much.

Now we have one other panel, and I am going to ask Catherine Whitfield, Rev. William Thurston, and Mr. Henry Zimmer if you will come forward now and take your position at the witness table.

Catherine Whitfield represents the Office of Family and Children Services here in Atlanta. Rev. William Thurston is the executive director of Operation PUSH. Mr. Henry Zimmer represents the

United Way here in Atlanta. Ms. Whitfield, we will receive your testimony first. I have a copy of your statement that has been sent to us. You may proceed to read it or summarize it if you care to.

STATEMENT OF CATHERINE WHITFIELD, FULTON COUNTY, GA., DEPARTMENT OF FAMILY AND CHILDREN SERVICES

Ms. WHITFIELD. I only had 1 day's notice. I am Catherine Whitfield, case worker for Fulton County DFAC. I have worked in Fulton County Department of Family and Children Services for approximately 12 years, and I have been a general assistance worker for 1½ years. This means that I see approximately 100 to 150 disabled people each month, either reviewing their disability and/or food stamps or to recommend places for help for their disabled situation, in interpreting mail, appointments, doctors, lawyers, social security offices, and disability adjudication sections, or helping to calm them down in their frustration with the system. Overall my unit of general assistance workers, myself included, handle about 624 active cases and expend $76,342 a month.

I wish to thank the subcommittee for allowing me this opportunity to present the present information and views I am about to give. I cannot stress strongly enough my feelings about the change in social security disability policies. I will try to be very brief, but sometimes I tend to stray and get carried away when I discuss the social security disability situation, but I am pleased and grateful to see that someone is interested enough to listen to the problems involving social security programs and how they affect our clients.

I first need to explain general assistance as used in Fulton County. General assistance is a program for the temporarily disabled or the permanently disabled persons SSI or SSA recipients, and it is an authority provided by Fulton County that they are able to help in some small measure, ease the financial burden of the disabled person.

General assistance approval is determined by financial needs and disability. If there is no obvious disability, there are not medical services given, medical information provided by a case worker from a previous source, or institution or Grady charges, and make this determination for either no disability or one for 3 months at a time. Three months is the longest period given at one time.

On my caseload which is relatively small, in comparison to some others, there are approximately 100 cases. I have to review about 70 of these per month, making about 30 home visits a month, calling about 50 people a week in regards to certain situations. I remind these people to keep appointments, read their mail, in interpretation, help them explaining their physical and mental illness to all concerned agencies, as much as possible. I counsel and listen to all problems.

When a mentally ill person is requested to answer a letter or comment or review, he is clearly unable to respond in most conditions, and he fears the person in charge. He is immediately cut off for benefits for failure to cooperate when he was unable to cooperate or did not understand. He is frightened of rebuke received from different people.

He then strikes out at family, friends and anyone else he makes contact with, because he is confused and frightened. The mentally ill are the ones this happens to most often. He is sent to prison or a mental institution and upon being released, denied SSI, SSA repeatedly, unless someone steps in and directs the client's care.

Often time he does not realize he has alternatives to denials, enclosures. He does not know where to turn for help, and winds up sleeping in an abandoned building, and anywhere else he can find. He is easily preyed upon by the stronger ones out in the world.

With this changing SSA policy, we in general assistance are getting more and more to mentally ill people having been terminated from SSA, SSI. About half of my cases are mentally ill people, being changed from place to place. This means that I have to expend more time and energy to these people, begging someone to help them. Apply, appeal and file for hearings. Someone to listen to them. Reassure them, and literally direct them in their efforts to obtain necessary help.

I have hand carried them to the disability adjudication section, to the doctor, because they are usually so far out that they cannot get there. Even demand that an application be taken because SSA instant denials to people who do not realize what is happening. They have been so abused in their efforts by the system, until they are too frightened to go in and ask again.

The disability adjudication section offices at times only do a perfunctory examination, or not at all. I sometimes take the clients to the doctors and sit waiting. I go to hearings and have even testified to the administraive law judge. I speak to the SSA representative and anyone else necessary in getting these people help.

The problem is the judges, hearing officers, disability adjudication section officers, and SSA representatives never really seeing these people, as the case worker does. We see them every week and all of their mental failures. The client is afraid to be open and honest to anyone. They feel that—the client never tells SSA or even the judges, the doctors that they kill, kill, kill, or the people reading their minds, of the inability to control their hostilities. The fears of eyes looking at them. They tell me because I listen. I ask questions. I care. I see the needs.

Our free clinic psychiatrists are too overloaded or they are inadequate to give the attention and care needed to write a statement necessary for the approval of SSA, SSI claims. I would like to give a good example.

A.H. was terminated after being on SSI for several years. He went berserk and broke into several homes and robbed people. He stated because he needed money in order to get a home. His parents were on his back to get a job. When he got a job, he was unable to stay on it because people was reading his mind all the time. He said they always know what he is doing, even the machines read his mind and know what he is thinking. He said he had to leave several jobs after working a day or two at the most.

This was when he tried robbing. Women beat him up all the time. He tried to slash his wrists. He wound up eventually in jail for 2 years, and I have my case loan to appeal in SSI.

Another fine example, Ms. B.S. Ms. S. was terminated. She was extremely hostile when I met her, complaining of voices telling her

to kill, kill, kill. The same people walking through her room. Knocking at the doors, but no one there. After a couple of sessions with me, she calmed down, and now her case is under appeal—she was cut off of SSI after years and has been on general assistance since 1982.

The two examples cited are typical of the types posed by SSI. These people are unable to follow through the appeal, hearing, and redtape dictated by the SSA. To discourage them for getting help.

I have been with the agency for quite a while and remember when we administered the old AD program—aid to disabled people. I know there is a better way to administer the program. The case worker's opinion matters none at all in these decisions, yet we see them more than anyone else involved.

I want to thank the committee and all interested parties for allowing me to appear before you, and, as I said, I get carried away in my strong beliefs sometimes, and wish to apologize if I am in any way out of line.

Chairman PICKLE. Ms. Whitfield, you not only have not been out of line, your testimony is very helpful because you are an active worker in the field and you see these people, and understand their frustrations and their hallucinations, perhaps, and you know they are so frustrated they do not know what to do.

Ms. WHITFIELD. They are frightened.

Chairman PICKLE. So we are glad to hear your testimony.

Now we will hear from Reverend Thurston.

STATEMENT OF REV. WILLIAM ANTHONY THURSTON, EXECUTIVE DIRECTOR, METRO-ATLANTA CHAPTER OF OPERATION PUSH [PEOPLE UNITED TO SERVE HUMANITY]

Reverend THURSTON. Thank you, Chairman Pickle, Congressman Jenkins, and Congressman Fowler, for this opportunity to present our concerns for and commitment to social justice for disabled Americans. We commend the House Social Security Subcommittee for holding this public hearing to examine the status of the social security disability [SSD] review process under the Reagan administration.

I will be brief. I was notified of the opportunity to testify late yesterday afternoon. I had other commitments and was only able to prepare our concerns in a relatively short amount of time. If time permits, we will submit a written statement for your consideration as a part of the file of this public hearing.

Chairman PICKLE. That will be fine.

Reverend THURSTON. If I had to have a topic for these brief remarks, it would come not only from a review of the material submitted to us, but also from our experience in working with the disabled, the poor, and the disadvantaged Americans. I would say that the topic of these comments would be: "The Reagan Administration's Social Security Disability Review Program Compounds the Problems Facing This Nation's Poor and Disadvantaged People."

The Reagan administration has announced its opposition to any disability reform legislation. Its present review procedures, as you appropriately contend, have an adverse effect on disability recipients. More than 1 million workers on social security disability have

had their continuing eligibility reviewed which has resulted in 450,000 terminations. Nearly 300,000 of these terminated disabled Americans have had their benefits, restored but only after a lengthy and costly legal process of review.

This review process, resulting in unjust benefit disruption, first presented severe financial, emotional, and physical threat to over a million disabled Americans and their families. Second, it has caused unnecessary reapportionment of limited personnel and financial resources of community-based organizations to service SSD terminees. Third, it forced many States to implement their own administrative procedures for the disability program in defiance of Federal CDR policy guidelines. Thus, as this subcommittee claims, it is evident that the entire social security disability program is in a State of administrative chaos which requires legislation to restore justice within limits to the present process of review.

The Reagan administration's review process for social security disability compounds the problem facing 34 million poor people within America. The proposed 1985 budget contains $10 billion worth of cuts in social programs and reduction in unemployment benefits. The Reagan administration's campaign is to reduce inflation interest rates and taxes on the rich, while tripling over 9 years the amount spent for defense. Some conservatives around this administration want to go even another step further, and count noncash benefits such as public housing, medicare and medicaid to distort the actual number of poor Americans, as well as to deprive the disadvantaged of the basic social service assistance. These noncash credits, for example, figuratively reduce the number of poor people from 34 to 23 million, in determining who falls below the poverty line which is, as you know, $9,862 a year for a family of four in 1982. Now Reagan, Meese, and company claim that 450,000 disabled Americans are morally ineligible to receive disabled benefits. First, these beneficiaries have been removed from the program without having the slightest real chance of finding other suitable employment, and who have undergone no improvement in their medical condition that qualified them for benefits in the first place. Second, this administration's overzealous implementation of its new CDR requirement seeks $1.6 billion worth of savings which is 10 times the $168 million reduction estimated by Congress in 1980 for the 5-year period subsequent to the enactment of the continuing disability program.

This requirement represents an increase both in terms of human as well as financial costs, which advances claims of unemployment benefits, welfare and social services. Operation PUSH contends that the social security disability program's present review process should be reformed to assist disadvantaged as well as disabled Americans to the greatest equal access possible to employment where possible, and social services where necessary.

If disabled Americans' claims are not adequately satisfied, then they could become members of a growing class of potential crime and emotional dispair. We contend that jails and mental hospitals ultimately cost society more than providing disabled Americans with the opportunity to work and with the assistance of social service benefits. We contend further that the poor along with disabled Americans are not Meese's freeloaders, but rather they are victims

of Reaganomics who have lost their benefits only to find inadequate help from the Federal Government. Thus, they must turn to those sensitive states and community groups with limited resources in order to have the basic services for their daily lives.

The continuing disability review process is contributing to the growth of two societies within America, one for the rich and one for the poor. We find that the working and middle class who are not eligible for tax breaks, must continue to bear a disproportionate burden of providing for social services.

The social security disability reform bill, H.R. 3755, however, is a responsible solution to this problem, because as this subcommittee contends, it provides real and substantive relief to thousands of disability beneficiaries presently undergoing eligibility review. It gives the Social Security Administration uniform statutory standards for the determination of disability beneficiaries. We support the proposed subjective evidence of pain study. However, we caution that it should not be used as a possible criterion to determine eligibility, but rather to find new ways of helping disabled Americans to cope with the realities of pain. We recommend also that there be an inclusion of disabled American advocacy-representatives on the proposed advisory council, on the medical aspects of disability.

Again, we thank this committee as we close, for inviting us to participate in this public hearing to share our concerns as well as commitment to social justice for disabled Americans. We thank this committee for bringing this issue to public attention. This issue, however, should be examined in the context of the growing problem confronting this Nation's 34 million poor people. We feel that this problem must be raised to national public debate and support by adequate social service legislation and job opportunities. For we live in a time when we must not only seek to balance the budget, but we must also seek to balance people's lives with socially meaningful jobs as well as social service benefits. We contend that we must always adhere to a higher principle of putting the human race over the nuclear arms race, for we must seek to provide social justice as well as to provide for national security.

Again, we thank you for this opportunity.

[The prepared statement follows:]

STATEMENT OF REV. WILLIAM ANTHONY THURSTON, EXECUTIVE DIRECTOR, METRO-ATLANTA CHAPTER OF OPERATION PUSH (PEOPLE UNITED TO SERVE HUMANITY)

Operation PUSH Metro-Atlanta welcomes this opportunity to present our concerns for, and commitment to, social justice for disabled Americans. We commend the House Social Security Subcommittee, for holding this public hearing, to examine the present status of the Social Security Disability (SSD) review regulations.

The Reagan Administration has announced its opposition to any disability reform legislation. Its review procedures, as the House subcommittee appropriately contends, has an adverse effect on disability recipients. More than one million workers on SSD have had their continuing eligibility reviewed which has resulted in 450,000 terminations. Nearly 300,000 of the terminated disabled Americans have had their benefits restored but only after a lengthy and costly legal-process of appeal. This unjust benefit disruption: (1) presents severe financial, emotional and physical burdens on millions of disabled Americans and their families; (2) causes re-apportionment of limited personnel and financial resources, of community-based organizations, to service SSD terminees; and (3) forces many States to implement their own administrative procedures for the SSD program in defiance of Federal CDR regulations. These observations support the claim that the entire SSD program requires new legislation to restore justice in its review regulations.

The Reagan Administration's review process, for the SSD program, compounds the problem facing 34 million poor people within the United States. The Administration's proposed 1985 budget contains $10 billion worth of cuts in social programs and reductions in unemployment benefits. The campaign here is to reduce inflation, interest rates and taxes on the rich; while tripling over nine years the amount spent for defense. Some conservatives around Reagan, as columnist Carl Rowan argues, want to even count non-cash benefits-public housing, Medicare, Medicaid and so on-to "distort" the actual number of poor Americans as well as deprive disadvantaged Americans of basic social service assistance. These non-cash credits statistically reduce the number of poor people from 34 to 23 million, who are below the poverty line income ($9,862 a year for a family of four in 1982).

Now Reagan, Meese and company claim that 450,000 disabled Americans are morally ineligible to receive disabled benefits. First, these beneficiaries have been removed from the SSD program without having the slightest real chance of finding other suitable employment as well as having no improvements in their medical condition that qualified them for benefits in the first place. Second, the Administration's over-zealous implementation of its new CDR requirements seek $1.6 billion savings which is ten times the $168 million reduction, estimated by Congress, for the five year period subsequent to the 1980 enactment of the CDR provision. This requirement increases both human and financial costs as found in the increased claims of unemployment benefits, and welfare and social services. The SSD program should assist disabled Americans to attain the maximum equal access to employment where possible, and to social services where necessary, for their survival and development. If disabled Americans claims are not adequately satisfied, then they may become vulnerable to crime, dispair and degradation. It costs society more to expand jails and mental hospitals than to provide adequate benefits and jobs for disabled Americans.

The present continuing disability review process contributes to the growth of the poor as members of the expanding community of disadvantaged Americans. The SSD Reform Bill (H.R. 3755) is a responsible solution, in part, to this problem because it provides relief to thousands of disability recipients undergoing eligibility review, and it gives the Social Security Act uniform standards for the determination of disability. We support the proposed study on the subjective evidence of pain. However, we caution that some notion of pain endurance should not be used as a possible criterion to determine eligibility under the SSD program. We recommend also the inclusion of disability advocates on the proposed Advisory Council on Medical Aspects of Disability.

Finally we again appreciate this opportunity to present our concerns for, and commitment to, social justice for disabled Americans. The CDR issue, however, should be viewed in the broader context of the adverse impact of the Reagan Administration's budget cuts on the Nation's 34 million poor people. The indicative of social justice press us to bring these issues to the center of the national public debate. The Reagan Administration claims to have a mandate to balance the budget. A just democratic government has also an imperative to balance human life with socially-meaningful jobs and adequate social service, particularily for its disadvantaged citizens. We pray that this imperative will result in the enactment of the SSD Reform Bill.

Chairman PICKLE. Thank you, Reverend Thurston, and Ms. Whitfield. I cannot imagine you having a better statement to submit to us, if you had a week's notice or 2 weeks' notice instead of just 1 day. You have put together a good strong statement, and we appreciate the depth of your observations. Appreciate your coming.

Reverend THURSTON. Well, I would like to say one thing. I would like to commend your staff for searching us out and receiving from us what we have found here at the local level, and nationwide. Without the assistance of this staff, our response would not have been possible upon short notice.

Chairman PICKLE. Well, I commend Congressman Fowler and Congressman Jenkins for helping us to give invitations to people who really know about the program, and who are informed about it, and things that ought to be changed, so you can express your thanks to your Congressman for those inclusions.

Mr. Zimmer.

STATEMENT OF HENRY ZIMMER, DIRECTOR, COMMUNITY PLANNING AND GOVERNMENT RELATIONS DIVISION, UNITED WAY OF METROPOLITAN ATLANTA

Mr. ZIMMER. Chairman Pickle, Congressman Jenkins, thanks for the opportunity to present information to you. I will echo what everybody else has said and say that I am very pleased with the efforts of the House to look into this issue and make some corrections in this tremendous problem area.

I am going to summarize the comments which I have submitted to you.

I am not going to present myself as an expert on social security disability benefits. I think the reason I am here is to share some background information that relates to the review process. This information is in conjunction with an emergency assistance study that we are undertaking in the metropolitan Atlanta area. I am chairing the study.

The relationship between emergency assistance and the whole disability area, particularly the review process, is that a number of disability clients, anywhere from 5 to 15 percent, depending upon the agency you speak with, are a part of the emergency assistance process.

Let me just make a few brief comments on the emergency assistance study, just to put it into perspective, and then a few other comments related to the recipients of social security disability benefits. The study that we are doing is looking at emergency food, shelter, housing, mortgage assistance and medical needs. We are looking at the gamut of services in the community. Part of what we are seeing is, as we look into this matter, is that emergency assistance is a pretty sizable effort in the metro Atlanta area, and we are talking about eight counties now. There are over 75 agencies and churches that are major providers of emergency assistance in the area, and our preliminary figures indicate that those organizations gave $3.4 million in actual financial assistance and $1.5 million in-kind assistance in 1982.

Another dimension of all of this is that emergency assistance efforts on the part of these organizations is precisely that. It is emergency assistance and frequently one time. In some instances it is given on a more frequent basis, but generally agencies do not have the kind of money to give repeated or continuing types of service. Generally the type of assistance that is given is not enough to meet the client's entire needs, particularly when you are dealing with housing and utilities needs.

Finally, I would like to say that the need for emergency assistance in the metro area is greater than what the agencies are currently able to provide.

With regard to the disability recipients that we are addressing in this legislation, I made some inquiries with some agencies which I consider very reliable and which are direct service providers in this area. I would just like to share some of their impressions. They are just impressions, since they did not conduct any statistical review. They did not go through their records. Some of the information that I think is pertinent to the changes in the legislation are such things as recipients under review can be involved in a process that

takes from 3 to 6 months. While I do not know the exact length of time, any lengthy period of time represents a problem.

A number of the agencies also said that review recipients frequently receive abrupt notice about termination. Proposals in the legislation addressed this to some degree.

For the individual seen by emergency assistance agencies, disability benefits frequently are the only source of income, or the primary source of income. When this source is cut off, clients must fall back on such things as food stamps, and the emergency assistance agencies. As I mentioned earlier, emergency assistance is just a one time or, at best, infrequent during the course of a year's period of time.

The combination of services that exist in the community, when an individual is under review, is not sufficient to meet that individual's needs. What are the effects then? Some of the obvious effects are that the individuals may lose their homes that they have. They may have to move in with children. They are going to find themselves in a substandard situation. I think it is safe to say that many, or at least some, of the "street people"—community homeless—are individuals who are experiencing some of this problem.

I would say that in the Metropolitan Atlanta area that there are some local government emergency assistance efforts. Fulton County is the principal local government providing emergency assistance, and Ms. Whitfield indicated that. Other local governments really are providing little or no support in what would be called general assistance, so you just have an aggravated problem. Fulton County is, however, providing over $1.1 million and this is a significant effort.

The other thing that needs to be stated is that the State of Georgia does not have a general assistance program, so the State itself is not dealing with the problem.

I guess the bottom line for me is that anything that can be done to reduce the time in the review process will be beneficial to the clients who are now put in the situation which is less than desirable. I think the other side of the coin is that anything that is done is going to help the local community, because we will then be in a position of channeling emergency assistance to money meet other needs.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF HENRY ZIMMER, UNITED WAY OF METROPOLITAN ATLANTA

Members of the Social Security Subcommittee, and Ladies and Gentlemen: My name is Henry Zimmer. I am Director of the Community Planning and Government Relations Division for the United Way of Metropolitan Atlanta.

I cannot present myself as an expert on social security disability benefits, since I am not in a direct service agency. However, I believe I can contribute to this hearing by sharing information that has been gathered in a study of emergency assistance needs for the metro Atlanta area, which I am chairing.

Let me take a moment to comment on the emergency assistance study. The study is sponsored by the Alliance for Human Services Planning which is a coalition involving the Atlanta Regional Commission, the Georgia Department of Human Resources and the United Way. The purpose of the study is to look at the need for emergency food, clothing, and shelter, as well as rent/mortgage, utility or medical assistance. The Study Committee, then, plans to make short and long range recommendations to deal with the need.

While the study is still in process, I would like to share a few observations:

Emergency assistance is a sizable effort in the metro area. Over 75 agencies and churches are involved in providing emergency assistance, group feeding or emergency shelter.

Our preliminary survey information indicates that $3.4 million was given in direct assistance and another $1.5 million in in-kindness assistance in 1982.

Emergency assistance efforts are just that—emergency in nature. Frequently, the emergency grants are one-time or limited in frequency during the year. Generally, the grants do not meet the entire need, especially where rent and utilities are involved.

Finally, the need for emergency assistance is much greater than the service currently available.

With this background, let me move to the question before us today. One of the areas we are examining in the study are causes for the need for emergency assistance. The causes include insufficient benefits in current public support programs and delays in processing applicants. The latter problem clearly relates to today's hearing. While I cannot present concrete statistics, emergency assistance agencies I have surveyed indicate that anywhere from 5 to 15% of the clients they see (depending on the agency) are there due to a disability application or review.

Let me share some of the agencies' observations about the process and its impact. (I would caution that these are observations.)

New applications can take anywhere from 6 to 12 months process.

New applicants frequently have to appeal to get benefits.

Applicants under review can be involved in a 3–6 month process.

Review applicants frequently get only abrupt notice about termination of benefits.

For most persons, disability benefits are the only source of income. Termination means they must rely on food stamps and emergency assistance agencies for support. These sources do not provide sufficient support.

The impact on recipients includes problems with medical services, possible loss of homes and numerous financial problems. Some of the community's "street people" are there due to the lack of disability benefits.

The only major local government effort to assist persons seeking disability benefits is in Fulton County. The Fulton County Government put over $1.1 million into this effort in 1982.

The State does not have a General Assistance program.

The bottom line, in my estimation, is that the disability review process creates many problems for the recipients and imposes an added financial demand on the community. The community cannot meet all of the recipient's needs; and therefore, the problems are aggrevated.

Any remedies that can be found for the process will surely help recipients but will also permit the community to direct its resources to other emergency assistance needs.

Chairman PICKLE. Thank you. You said that your group has provided in contribution $3.4 million in direct assistance, and another $1.5 million in in-kind assistance?

Mr. ZIMMER. This is not the United Way, sir.

Chairman PICKLE. What is the source of that funding?

Mr. ZIMMER. It varies. The sources include United Way support but also include private donations and church donations. It does include some Federal support from various programs, such as the emergency food and shelter program.

Chairman PICKLE. I am trying to figure out how much of this is Federal assistance and how much of this is local.

Mr. ZIMMER. The figures that I have here now, and these are preliminary, indicate that about a quarter of a million of that would be Federal and the balance would be through local resources such as local government, churches, United Way, private donations, and so forth.

Chairman PICKLE. And another question is that when you said that the most of these people that have to get assistance from your group, is that you said that disability benefits are almost their only

source of funding. Where do you get that information? What is the source of that statement?

Mr. ZIMMER. My source is from the agencies that are providing the service.

Chairman PICKLE. This is from United Way?

Mr. ZIMMER. These are local emergency assistance agencies, yes, sir. In talking with them, they basically said that their clients do not have any other source of income. In other words, the removal of disability benefits essentially removes the major or the primary source of income to those individuals.

Chairman PICKLE. Mr. Jenkins, what statement or questions do you have at this time?

Mr. JENKINS. Mr. Chairman, I want to particularly express my appreciation to the panel and for you individually for the work that you do in this particular area. I especially want to express to Ms. Whitfield that it is very satisfying and somewhat rare to find an individual that obviously cares and has compassion and does regularly work within the confines of your employment, to assist people. I find that too often that they do not have any assistance in the very basic problem of applying for benefits and being advised I know you do provide assistance and good service. I noted that you have appeared many times before the ALJ's because you knew from your personal casework with your clients of those particular circumstances. I think that is very commendable and I want to say to you as an employee of the State, that I commend you for that. I wish we had every State employee that devoted that type of attention to that type of person.

I simply want to say to the rest of the panel that my district does not have large cities, primarily just small towns. I recognize the difficulties you have in meeting the basic needs of people. Of course, in small towns we do not have shelters. We do not have some of the voluntary organizations that are easier to get sometimes in larger cities, but we have the same difficulties that you face in a little different way, but I want to commend you for your work and for coming before this subcommittee.

Thank you, Mr. Chairman.

Chairman PICKLE. Thank you, Mr. Jenkins.

Ms. Whitfield, you said that in your unit alone, your unit of general assistance program, that you had about 624 active cases, and that you spent about $76,342 monthly. Do you mean you have about 624 active cases each month—that is an ongoing number?

Ms. WHITFIELD. Not necessarily. Some of them are closed out and some are temporarily disabled. A broken leg can last a month, 2 months, and SSI recipients will get approved, so this one goes off and another one comes on, so it will vary.

Chairman PICKLE. It will vary, but I would assume then that in general this is sort of a rolling number—some will go off—others will be coming on?

Ms. WHITFIELD. Yes, sir.

Chairman PICKLE. So you are handling a large number of cases——

Ms. WHITFIELD. Constantly.

Chairman PICKLE. Constantly on the books.

Ms. WHITFIELD. Yes, sir.

Chairman PICKLE. 600 or so in that neighborhood per month.

Ms. WHITFIELD. Yes, sir.

Chairman PICKLE. That is a lot of cases.

Ms. WHITFIELD. Yes; it is.

Chairman PICKLE. How are you involved—your organization, Reverend Thurston?

Reverend THURSTON. That is what I wanted to share with you. The disability cases that we have been talking about here should include the caseload of national organizations or community groups such as ours, as well as the many churches here in Atlanta and across the country. Our clients, as well as our costs, do not figure into the case statistics of Government. There are many disabled Americans who cannot afford the eligibility review process, so we will take our attorneys that we might have on a social justice project and put them on SSD cases in order to help disabled Americans who have been terminated by CDR. There are other disadvantaged persons who may go to their local church or to their local community group, and who are not aware of the various appeal processes and social services. So these churches or community groups have to absorb these costs because they have a moral commitment to poor people who do not have the economic means of having a balanced life with a minimum means of survival.

So I think the universe social service needs and costs should include the human and financial resources that never even become a part of the case statistics of Government, and therefore, cannot become part of the national debate. As I said earlier, it costs more to build jails and mental hospitals than it does to provide the opportunity to work, as well as adequate social service assistance.

Chairman PICKLE. I am mindful, and I know the committee is mindful that there are a lot of agencies in operation locally who help tremendously in these areas, and the relief is not to come totally from actions in the disability field. I recognize that and without the local agencies we would be hopelessly lost in this country.

I want to say to you and to this panel and to all of the people who have come here at this hearing, to repeat again that our subcommittee is interested in hearing from people about the operation of the social security program. We were invited to come to Atlanta by Congressman Fowler and Congressman Jenkins, and we were pleased to accept this invitation, and I think we have had a good hearing, because we have found general support of the legislation that is pending, and we have also learned a lot about the operation of the overall program from the administrative law judges, the lawyers, and others in the program, and an immediate concern of mine is to let the people in the various sections of the country know that we understand that there are problems in this field, and we are trying to do something about it.

We need to come locally throughout the country to hear from individuals to know better how we can run this program. We do have a good piece of legislation pending, and I want to repeat again to you, I think we will pass this legislation in the House and hopefully you can get the support of your two Senators here to advance it through the Senate, and I hope you are active in that regard, and I solicit your help in that area.

We do not have all of the answers to the disability program, but we are concerned that an improvement be made in the administration of the program, and the abrupt manner in which the cases have been heard on a cash basis—over 500,000 people have been removed from the disability rolls over the last 3 years. About two-thirds of those appealed and were reinstated, which indicates to us that the determination to remove them, and the decision to reinstate them—there is a great lack of uniformity, and we think it is—Mr. Jenkins is correct when he was trying to find out—"why is this," simply because we do not have common guidelines, because we do not have medical improvement standards. Because we do not take into consideration the multiple impairment aspect, so we are trying to find a better answer and I think we are on the right track, and I appreciate the fact that you would come and make your statements, and I express my appreciation to all of those who have made statements on this subject.

I know this has been a long hearing. We started out at 10 o'clock and now we have gone through the lunch period. We wanted to make the record complete. Now, every word that has been said this morning and the statements submitted will be a part of the U.S. Congress documentation of this hearing on social security disability benefits. So you have helped us compile a record that we hope will be helpful to people who need the help most. I thank you and I thank all of the people who have come here this morning.

If there are no other questions or statements that any of the members want to make, I will now call this meeting of the subcommittee to a close and we will adjourn subject to call. Thank you.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

J. CHARLES COLLINS, JR.
ATTORNEY AT LAW
242 HARDING DRIVE
NEW ORLEANS, LA. 70119

RT. 4 BOX 90 U
FOLSOM, LA. 70437

(504) 488-9716
(504) 796-5482

April 3, 1984

Honorable J. J. Pickle, Chairman
Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

Dear Sir:

On March 23, 1982, I submitted to you for the Subcommittee's consideration and I herewith submit again correspondance which documents a consistent pattern of intimidation of administrative law judges in the Office of Hearings and Appeals of Social Security.

Unfortunately, the Committee printout, in Document # Serial 97-54, in printing copies of the letters I had sent to you, omitted to print the names of the individuals listed on those letters as receiving copies of the correspondance: Messrs. Philip Brown, Robert L. Trachtenberg, John Poore, Irwin Friedenberg, and Andy Hickam.

I concluded my letter to you of March 23, 1982 by noting that I expected "massive court intervention...for the protection of taxpayers' rights...." Space does not permit a catalog of the court actions against the Secretary since that time. However, I might direct your attention to the case of Association of Administrative Law Judges, Inc. v. Margaret M. Heckler, et al., U. S. District Court, District of Columbia. No. C. A. 83-0124, which involved a ten day court hearing.

I am informed that a parallel civil action on behalf of claimants will be filed shortly by public interest groups.

I am requesting that you file again for record the documents which I attached in my letter of March 23, 1982 together with the enclosed pertinent correspondance from the secretary intended to intimidate the administrative law judges and to conceal from the public the Secretary's concerted effort to deny claimants equal protection and due process of law.

Sad to say, the Department of Justice which should protect claimants' rights has appeared in all civil proceedings as a representative of the Secretary and her subordinates whose own record is resplendent with unconstitutional and illegal behavior.

Please note from Page 7 of Exhibit 2 contained in my letter of March 23, 1982 that the Department of Justice denied its intimidation of the judges and plainly stated "Also, (Assistant United States Attorney) Miles said he would not hesitate to discredit ALJ Collins and ALJ Ponder by introducing evidence of the overt anti-Semitism they expressed towards ALJ Sarett and the former top OHA management. A trial will probably cause certain divisiveness and acrimony within the ALJ corps."

This is a situation which no amount of profanity can properly describe.

Sincerely yours,

J. Charles Collins, Jr.
Administrative Law Judge

Enclosures

J. CHARLES COLLINS, JR.
ATTORNEY AT LAW
942 HANDING DRIVE
NEW ORLEANS, LA. 70119

ST. & BOX [illegible] U
FOLSOM, LA. 70437

504: 488 9718
504: 796 9483

March 24, 1982

Honorable J. J. Pickle, Chairman
Subcommittee on Social Security
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D. C. 20515

Dear Sir:

After your recent oversight hearings on the Office of Hearings and Appeals of the Social Security Administration, a request was made for written comments and suggestions on H. R. 5700.

The undersigned is an administrative law judge with the above organization. In its paper on the operation of the Office of Hearings and Appeals in March of 1979, your committee staff referred to this agency as the "ultimate in Mickey Mouse". These are words of wisdom. It is sad, however, that such an operation should have influence over the rights of hundreds of thousands of taxpayers.

In your 1979 hearings someone presented an affidavit signed by me, and I gave testimony to the effect that the judges in the New Orleans office of OHA had been subjected to intimidation. I would like to amplify my statements of 1979. The administration has denied this intimidation and consistent patterns of conduct. This denial is untrue.

I am attaching hereto: (1.) Freedom of Information Act requests and replies, consisting of Judge Carl Sarett's reports as Judge in Charge to Chief Judge Brown, et al.; (2.) Memorandum of February 25, 1980 of Burton Berkeley to Andrew J. Young, then Associate Commissioner of OHA, showing, in particular, the methods that the Social Security Administration would use to suppress evidence of their intimidating conduct; and (3.) Freedom of Information Act request for judges and offices "targeted" for review under the Bellman Amendment and the reply thereto.

COMMENTS: Judge Sarett is presently a member of the Appeals Council. Burton Berkeley is presently a factotum on the Appeals Council with the exalted title of Co-Deputy Chairperson.

I have no suggestions; however, I can foresee only massive court intervention in the operation of OHA as ultimate protection of taxpayers' rights under the Administrative Procedure Act.

Sincerely yours,

J. Charles Collins, Jr.
Administrative Law Judge

March 10, 1980

1300 Plaza Tower Building
1001 Howard Avenue
New Orleans, Louisiana 70113

Mr. Philip T. Brown
Chief Administrative Law Judge
Office of Hearings and Appeals
U. S. Social Security Administration
3833 North Fairfax Drive
The IBM Building
Fourth Floor
Arlington, Virginia 22203

Dear Mr. Brown:

You will recall your meeting with the undersigned and Administrative Law Judges George M. Ponder and Thomas J. D'Aquila on November 17, 1977 in Arlington, Virginia.

Following that meeting with you and John Poore, the then Administrative Law Judge in Charge Carl Sarett confronted the undersigned and ALJs Ponder, D'Aquila, and Simpson threatening disciplinary action because of our high reversal rates. He stated at that time that he would make periodic reports in writing to you.

ALJ Sarett did in fact make these reports to you in writing in December, 1977 and in January and February, 1978. He sent copies of his correspondence to Irwin Friedenberg, John Poore, Robert Trachtenberg, and Andrew Hickam.

This correspondence is in your records in Arlington on the New Orleans office of OHA.

The undersigned and ALJs Ponder and D'Aquila formally request in the public interest that they be provided with copies of the correspondence described above from ALJ Sarett to you under the Freedom of Information Act, 5 U.S.C. 552 et seq.

Please provide us with this information within the statutory time limit.

Sincerely,

J. Charles Collins, Jr.
Administrative Law Judge

EXHIBIT 1
Page 1 of 10.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION
P.O. BOX 2518
WASHINGTON, D.C. 20013

REFER TO:
SGP-3

OFFICE OF
HEARINGS AND APPEALS

New Orleans, Louisiana 70112

7 APR 1980

Mr. J. Charles Collins, Jr.
Administrative Law Judge
Office of Hearings and Appeals, SSA
3300 Plaza Tower Building
1001 Howard Avenue
New Orleans, Louisiana 70113

APR 17 1980

5073
Office of Hearings and Appeals

Dear Judge Collins:

This is in further response to your request under the Freedom of Information Act. I am enclosing copies of three memorandums from ALJ Carl W. Sarett dated December 5, 1977, January 5, 1978 and February 10, 1978. I believe these are the records to which you referred. Deletions have been made in the documents of personally identifying information in order to protect the privacy of the individuals involved. If you wish to obtain a formal determination on the deletions, we will, upon request, forward the matter to the Director, Office of Information, Baltimore, Maryland for a decision.

Sincerely yours,

P.J. Kumpha for

Daniel L. Schultz
Director, Office of
Policy and Procedures

Enclosures

EXHIBIT 1.
Page 2 of 10

MORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Room 200, 1100 Tulane Avenue
New Orleans, Louisiana 70112

: Judge Philip Brown
Arlington, Va.

DATE: December 5, 1977

: Carl W. Sarett, ALJIC

RECEIVED
DEC 9 1977
Office of the Chief ALJ

: Judges, BHA, N.O.,La.

I am glad to report that since our visit to Arlington last month there has been no noticeable friction in our office. I cannot say that the other judges are cooperating or not cooperating in any particular respect because I have not asked them to do anything. In fact, other than with Judge Simpson, I have had very little contact with them.

While our office remodeling is not completed, at least we have all our hearing rooms functioning again. The staff has moved into the center work space and they seem to be functioning fairly well without any complaints having been made to me or to the Administrative Officer.

In regard to Judges Ponder, Collins and D'Aquila, I cannot tell if the visit to Central Office had any apprec. effect except that I have not heard of their doing anything especially outlandish since the visit.

In regard to particular [redacted], the only specific things noticed were that on two or three occasions in mid-afternoon [redacted] was seen asleep in [redacted] office with [redacted] feet up on the desk. I do not know if [redacted] the [redacted] requested by C.O.. [redacted] called me from [redacted] to ask if I knew anything of "stories" Judge Collins was telling some judges about [redacted]. I had no knowledge of this.

As you can see by the monthly report for November, the reversal rate continues to be extreme. Judge Ponder granted 24 and denied only 2; Judge Collins granted 23 and denied 7; Judge D'Aquila granted 20 and denied 5. For the record, I was 13 and 14.

EXHIBIT 1
Page 3 of 10.

The excessive use of VE's and MA's seems to have abated for the month. There was quite normal usage of expert witnesses.

With your permission, unless something of consequence happens, I will forward monthly rather than semi-monthly reports.

Carl Swett

CWS:mbl
cc: Robert L. Trachtenburg
John Poore
Irwin Friedenberg

EXHIBIT 1
Page 4 of 10

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

TO: Judge Philip Brown
Arlington, Va.

DATE: January 5, 1978

REFER TO:

FROM: Carl W. Sarett, ALJIC
New Orleans, La.

RECEIVED
JAN 10 1978
Office of the Chief ALJ

SUBJECT: Judges, BHA, New Orleans

With one important exception noted below, I have nothing in particular to report for the month of December 1977. Particularly with the judges taking a great deal of annual leave, it was a quiet month in our office.

I feel compelled, however, to call your attention to the continued incredible reversal rate of some judges here. For the month of December 1977 Judge Ponder affirmed 8 cases and reversed 22. Judge D'Aquila affirmed 4 and reversed 28.

I do not guarantee the absolute accuracy of my figures, but for the year 1977 Judge D'Aquila granted 89.6% of all cases decided by him. Judge Ponder granted 85%.

In 1977 Judge Collins was a bit more moderate, granting [illegible] of his cases. The reversal rates for Judge Simpson and the undersigned were 66% and 41%, respectively.

Whether it is by way of peer review, review by the Appeals Council on it's own motion, or otherwise, I would urge that abnormally high reversal rates be "investigated".

Carl W. Sarett

CWS:mbl
cc: Robert L. Trachtenberg
John Poore
Irwin Friedenberg

EXHIBIT 1
Page 5 of 10

New Orleans

EMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

: Chief Judge Philip T. Brown
Mr. John L. Poore

DATE: February 10, 1978

RECEIVED
2-22
FEB 14 1978

DIVISION OF ADMIN. RHI

M : Carl W. Sarett, ALJIC
BHA, New Orleans, Louisiana

(ECT: Rumors of Arrest of Mr. Trachtenberg and Mr. Poore

On Friday afternoon, February 3, 1978, I was told by [redacted], that Judge Collins had been heard telling members of the staff that Mr. Trachtenberg and Mr. Poore had been arrested by the FBI apparently in connection with alleged "kickbacks" from suppliers.

As I left the office that afternoon about 5:15, I asked Judge Collins what had happened. He stated to me that the FBI had arrested Mr. Trachtenberg, Mr. Poore, and a Mrs. Gardner, who was employed with BHA, in connection with kickbacks from BHA suppliers. He obviously was very happy to relate such information. He was most affirmative and dogmatic as if there was no doubt about the arrests.

He said that it had been confirmed with five different people, obviously meaning that five people had told him of the arrests on the telephone. He also made some rather derogatory remarks about Mrs. Gardner. He added that Mr. Trachtenberg did not have the qualifications for the job as Director and that the only reason he had been kept in the job was "they" were waiting to entrap him in the kickback situation.

I also observed that Judges Collins and [redacted] were busy on the telephone a good part of the afternoon of February 3rd. [redacted] even stayed later than [redacted] usual 3:30 quitting time in order to await a telephone call.

On Monday February 6, 1978, in the late afternoon, I asked Judge Collins if he had any further information. Again, he was emphatic as to the arrests. He stated that an indictment had been returned against three people employed or connected with BHA suppliers and that a sealed indictment was to be returned either on February 6 or possibly 7 (frankly, I do not remember which date he mentioned) against Messrs. Trachtenberg and Poore. He added that they had been taken away from BHA Headquarters on Friday afternoon by the FBI and that Mr. Trachtenberg had not been seen at Central Office since then. He did say that Mr. Poore had been seen back at work.

EXHIBIT 1
Page 6 of 10

On February 8, 1978, I again inquired of Judge Collins. At this point he did not seem quite as emphatic as previously. He stated that all he knew were the "physical facts" - that Trachtenberg and Poore were taken away by the FBI.

This afternoon, February 10, 1978, I spoke to [redacted]. [redacted] stated that on the afternoon of February 3, 1978 [redacted] saw and heard [redacted] and Collins telling staff personnel that Mr. Trachtenberg and Mr. Poore had been arrested. [redacted] also stated that [redacted] had heard Judge Collins on that Friday afternoon telling staff people that the FBI had picked up and arrested Mr. Trachtenberg, Mr. Poore and "his girlfriend".

Carl W. Garett
Administrative Law Judge In Charge

EXHIBIT 1
Page 7 of 10

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

April 16, 1980

REFER TO

3300 Plaza Tower Building
1001 Howard Avenue
New Orleans, Louisiana 70113

OFFICE OF
HEARINGS AND APPEALS

Mr. Philip T. Brown
Chief Administrative Law Judge
Office of Hearings and Appeals
U. S. Social Security Administration
3833 North Fairfax Drive
The IBM Building
Fourth Floor
Arlington, Virginia 22203

Dear Mr. Brown:

I have reviewed correspondence from Administrative Law Judge Carl Sarett to you obtained by Administrative Law Judge J. Charles Collins, Jr., under the Freedom of Information Act.

Pursuant to the said Act, I am hereby formally requesting from you all copies of Judge Sarett's correspondence with you relating in any way whatsoever to me, particularly his report of January 31, 1978. I am also requesting the date that these reports commenced and the date they ceased, if, indeed, ever they did.

Sincerely,

George M. Ponder
Administrative Law Judge

EXHIBIT 1
Page 8 of 10

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION

SGP:3

28 MAY 1980

New Orleans, Louisiana 70112

Mr. George M. Ponder
Administrative Law Judge
Office of Hearings and Appeals, SSA
3300 Plaza Tower Building
1001 Howard Avenue
New Orleans, Louisiana 70113

JUN 4 1980

5073
Office of Hearings and Appeals

Dear Judge Ponder:

This is in further response to your request pursuant to the Freedom of Information Act for "all copies of Judge Sarett's correspondence with /Chief ALJ Brown/ relating in any way whatsoever to me, particularly his report of January 31, 1978." You also asked for "the date that these reports commenced and the date they ceased."

Enclosed are copies of records we have identified in response to your request. I am informed that there are no documents showing when the reports by Judge Sarett commenced or when they ended. Deletions have been made in the documents of information which we believe to be exempt from mandatory disclosure. We are referring your request to the Director, Office of Information, SSA, Baltimore, Maryland for a decision regarding the deleted material.

Sincerely yours,

Daniel L. Schultz
Director, Office of
Policy and Procedures

Enclosures

cc: Office of Information

EXHIBIT 1
Page 9 of 10

EMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
New Orleans, Louisiana 70112

: Judge Philip Brown

DATE: January 31, 1978

REFER TO:

OM : C. W. Sarett, ALJIC

UBJECT: Judges - BHA, N.O.,La.

I have nothing of great significance to report for the month of January, 1978 in regard to matters discussed at our meeting last November.

It should be stated, however, that there has been no substantial change in the pattern of reversal rates. One judge again has used an unusually high number of Medical Advisors. Another continues his practice of never using Vocational Experts. [redacted].

Carl Sarett

CWS:mbl
cc: Robert L. Trachtenberg
John Pore
Irwin Friedenberg
Andy Hickam

EXHIBIT 1
Page 10 of 10

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Office of Hearings & Appeals
700 Old & Gas Building
1001 Tulane Avenue
New Orleans, Louisiana 70112

February 10, 1982

Delivered By Hand
By Judge Harold G. Adams

Mr. Louis B. Hays
Associate Commissioner
Office of Hearings and Appeals
Social Security Administration

Dear Mr. Hays:

I have been given reason to believe that on February 25, 1980 a certain Burton Berkley, an employee of the Social Security Administration, addressed a memorandum to Andrew J. Young, your predecessor in office, containing a derogatory and libelous reference to me.

This memorandum has reference to certain litigation known as Weaver v. Califano, U. S. District Court, N. Dist. Ga., Atlanta Div., C-76-1437-A. Under the Freedom of Information Act, 5 U.S.C. 552 et seq., please furnish me with a copy of this memorandum.

Sincerely,

J. Charles Collins, Jr.
Administrative Law Judge

cc: Judge Harold G. Adams

EXHIBIT 2
Page 1 of 2

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to SGP-3

Social Security Administration

Office of Hearings and Appeals
PO Box 2518
Washington DC 20013

FEB 18 1982

Mr. J. Charles Collins, Jr.
Administrative Law Judge
Office of Hearings and Appeals, SSA
200 Oil and Gas Building
1100 Tulane Avenue
New Orleans, Louisiana 70112

Dear Judge Collins:

This is in response to your letter of February 10, 1982, in which you request, pursuant to the Freedom of Information Act, a copy of "a memorandum /dated February 25, 1980/ to Andrew J. Young ... containing a ... reference to me" and concerning the case of Weaver v. Califano. Your request has been referred to me because of my responsibilities under the Freedom of Information Act.

I reviewed the memorandum and have concluded that it contains information which I believe may be withheld under the Freedom of Information Act. However, only the Director, Office of Information, can deny access to records of the Social Security Administration. Therefore, I am referring your request to that office in Baltimore, Maryland, for a decision on disclosure of the memorandum.

I note that your request was on Department of Health & Human Services stationery and you used a franked envelope. This is to remind you that employees of Federal agencies making requests under the Freedom of Information Act are acting as members of the public and not in any official capacity; thus use of official stationery and franked envelopes is inappropriate.

Sincerely yours,

Ralph Smith

P. J. Kurapka
Director, Division of
Appeals Procedures, Office
of Policy and Procedures

New Orleans, Louisiana 70112

5-73
Office of Hearings and Appeals

EXHIBIT 2
Page 2 of 8

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administration

Refer to — Baltimore MD 21235

SXN

Mr. J. Charles Collins, Jr.
Administrative Law Judge
Office of Hearings and Appeals, SSA
200 Oil and Gas Building
1100 Tulane Avenue
New Orleans, Louisiana 70112

Dear Judge Collins:

I am responding to your letter of February 10, 1982 to Mr. Louis B. Hays because of my responsibilities under the Freedom of Information Act.

After carefully reviewing the memorandum dated February 25, 1980 addressed to Andrew J. Young, which you are requesting, I have decided that it is exempt from disclosure under 5 U.S.C. 552(b)(5) of the Freedom of Information Act. The Freedom of Information Act exempts from disclosure "...inter-agency and intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency...". In this regard the regulations of the Department of Health and Human Services provide that intra-agency and inter-agency communications are not available "...to the extent they reflect the views and judgment of the writer or other individual" (45 CFR 5.73). The memorandum in question expresses the views and opinions of the writer and therefore disclsoure is not required.

If you disagree with this decision, you may request a review. Any appeal should be mailed within 30 days of receipt of this letter to Mr. Paul B. Simmons, Deputy Commissioner, 6401 Security Boulevard, Baltimore, Maryland 21235. Please mark the envelope "Freedom of Information Appeal."

Sincerely,

Gilbert C. Fisher
Director
Office of Information

EXHIBIT 2
Page 3 of 8

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

OFFICE OF THE ASSOCIATE COMMISSIONER

February 25, 1980

TO: OCALJ
AC
OAO
OPP
OA

For your review. Item has been added to agenda for 2/26 Executive Staff Meeting.

Barbara Haskins
B. Haskins
Executive Secretary

Attachments

EXHIBIT 2
Page 4 of 8

RANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

TO : Andrew J. Young
Associate Commissioner
Through: ES ____

DATE: February 25, 1980

REPLY TO SGA4

FROM : Burton Berkley BB
Special Counsel

SUBJECT: Proposed Settlement of the Weaver Case -- INFORMATION

Purpose

To inform the Associate Commissioner of the executive staff members' opinions regarding the proposed settlement.

Recommended Uses of Information

This information is being furnished to assist the Associate Commissioner in determining the extent to which we are willing to meet the terms of plaintiff's proposed settlement and in deciding what our response to the proposal should include.

Facts

A meeting was held which was attended by the following executive staff members in addition to myself: Phil Brown; Irv Friedenberg; Ed Semans; Dan Schultz; and Jack Camilleri. All had reviewed the settlement proposal and were generally unenthusiastic about its terms.

Phil Brown observed that the very fact that we would agree to settle on plaintiffs' terms assumes that we are wrong and that we did engage in improper conduct. Dan Schultz believes that the settlement challenges the Secretary's authority and the legitimacy of management's right to monitor ALJ performance. He questioned whether OHA has the authority to agree to the terms of the settlement since it would, to some extent, restrict the Secretary or her successor in instituting future management initiatives intended to improve performance. I pointed out that we may end up with even more restrictive conditions if the court finds against us. Dan believes we should take that risk.

EXHIBIT 2
Page 1 of 8

I informed the staff members that I do not believe plaintiffs' attorneys will agree to substantial modification of the proposed settlement. They have given up as much as they will give up. They believe that if reversal rates are available to reviewing authority or administrative supervisors, this will result in the possibility or appearance of pressure to conform to some sort of norm for reversal rates. I had explained to plaintiff's attorneys that OHA only uses reversal rates as an indicator of possible high defect rates, and that we had never threatened or counselled ALJs regarding reversal rates. The only counselling which had been or is done was and is based on specific defects in specific cases. They still believe however, that the knowledge of the availability of reversal rates to the Appeals Council members and Regional Chief ALJs possibly influences the ALJ corps in their decisional process.

Item (e), as it pertains to dissemination of reversal rates, caused a great deal of concern. Phil Brown is opposed to any settlement which would prohibit the RCALJs from obtaining copies of such data. He regards the RCALJs as the principal management officials in the regions. To prohibit them from receiving the reversal rates would deprive them of valuable information and be demeaning. Irv Friedenberg is willing to have the Appeals Council, including himself, excluded from distribution of reversal rate data. He does not believe this information is necessary for the Council to perform its primary task of reviewing Social Security claims. Dan Schultz does not believe Irv should bind future Appeals Council members from receiving this data. He further pointed out that reversal rate data is available to anyone who makes a request under the Freedom of Information Act. Thus, if a RCALJ, Appeals Council member or anyone else wanted this information, we would be required to furnish it under FOIA. Dan also pointed out that inasmuch as ranked reversal rate listings are retrievable from the computerized data system, we are required to furnish this information, upon demand and payment of costs, under FOIA. Also, Congress sometimes requests this information. Item (f) would have to be revised to reflect these exceptions.

All of the participants were opposed to Item (i). I explained that I had informed plaintiffs' attorneys this item was totally unacceptable because it would preclude the Appeals Council from reviewing a case on its own motion. They told me such was not their intention and they are amenable to modifying the language. I suggested that we redraft this item so it will be acceptable to us but the other executive staff members did not agree. They believe

EXHIBIT 2
Page 6 of 8

the item should be stricken in its entirety or plaintiffs' attorneys should be required to submit alternative language. I am opposed to this. I believe it makes us look as though we are playing games. I still favor redrafting the item with language acceptable to us, and I have done so in my suggested draft.

Dan suggested that we agree to split the costs for deposition and other court costs rather than pay the entire amount, otherwise it would appear we are conceding the whole case. Ed Semans said we had better determine the status of the Weaver and Parker claims before we agree to establish the onset dates set forth in the settlement. There may be something in the record, such as work activity, which would preclude continuous payment. We have now been informed by Walter O'Brien of OAO that these claims could be paid.

There was general concern about the composition of any class which might be certified. Everyone agreed that we would have to know the number of cases involved before we take any action on this item.

I have spoken with Miles Eastwood, now the Assistant U.S. Attorney representing the Government, on several occasions concerning the proposed settlement. Miles was formerly the Assistant Regional Attorney assigned to the case, so he is very familiar with all aspects of the matter. He believes that we have a good chance of prevailing if it goes before the court for decision but, in view of the remand in Nash, there will probably be a full trial. He also said that the plaintiffs' attorney will want to take more discovery including your deposition and those of Phil Brown and Jim Mortenson, who went to Atlanta with me. He thinks that it could easily take 4-5 years before the litigation, including appeals, is completed. If the case goes to trial we can anticipate that plaintiff will call as witnesses many of those same ALJs who have been in opposition to management who would have testified in the Bono case. We, of course, will counter by calling as witnesses many ALJs who support our position. Also, Miles said he would not hesitate to discredit ALJ Collins and ALJ Ponder by introducing evidence of the overt anti-Semitism they expressed towards ALJ Sarett and the former top OHA management. A trial will probably cause certain divisiveness and acrimony within the ALJ corps.

EXHIBIT - 2
Page 7 of 8

A further factor to be considered is the possibility of the adoption of the Bellmon Amendment. We certainly cannot bind ourselves in this litigation to act in such a way as to violate a statute.

I have attached, at Tab A, the settlement proposal submitted by plaintiff's attorneys. At Tab B, I have attached a redraft along the lines suggested by the executive staff. I do not believe this redraft would be accepted by the plaintiffs' attorneys.

Attachments
cc: Phil Brown
Irv Friedenberg
Ed Semans
Dan Schultz
Jack Camilleri

EXHIBIT 2
Page 8 of 8

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to SGP-3

Office of Hearings and Appeals
PO Box 2518
Washington DC 20013

OCT 28 1981

Mr. J. Charles Collins, Jr.
Administrative Law Judge
Office of Hearings and Appeals
200 Oil and Gas Building
1100 Tulane Avenue
New Orleans, Louisiana 70112

Dear Judge Collins:

This is in response to your request for "a copy of the names of all [administrative] law judges and hearing offices who have been sent instructions to forward their files to the ... Office of Appraisal ...."

Your request was referred to me for reply because of my responsibilities under the Freedom of Information Act. Copies of the requested information are enclosed.

Sincerely yours,

P. J. Kuripka
Director, Division of
Appeals Procedures, Office
of Policy and Procedures

Enclosure

New Orleans, Louisiana 70112

NOV 2 1981

5073
Office of Hearings and Appeals

EXHIBIT 3
Page 1 of 4

ONGOING BELLMON REVIEW

Targeted Hearing Offices

Harrisburg, PA
Johnstown, PA
Wilkes-Barre, PA
Roanoke, VA
Billings, MT
Fargo, ND
Spokane, WA

Targeted ALJ's

Region I

Michael J. John
Boston, MA

Clayton A. Dietrich
Hartford, CT

Region II

Rafael Buono-Portillo
Bayamon, PR

Jose J. Santaigo*
Hato Rey, PR

Region III

Joseph E. Lodgson
Paul R. Stone
Charleston, WV

David E. O'Neil
Huntington, WV

David J. Kozma
Milton P. Shore
Pittsburgh, PA

Region IV

Frank B. Borowiec
Alfred A. Quillian
Doraville, GA

James G. Henry
Ft. Lauderdale, FL

Corwin G. Muse, Jr.
Jackson, MS

Region V

John T. Kelly
Cincinnati, OH

Harry E. Pickering
Cleveland, OH

Robert C. Walsman
Indianapolis, IN

James A. Kemper
Milwaukee, WI

Region VI

F. Philip Falvey
John F. Loehr
Albuquerque, NM

Joseph C. Collins, Jr.
Thomas J. D'Aquila
New Orleans, LA

Region VII

Richard L. Jandt*
Kansas City, MO

Region IX

Barry M. Wesker*
Pasadena, CA

Morris H. Kross
Phoenix, AZ

James J. Lawill*
James S. Higgins
Nicholas G. Stucky
Sacramento, CA

ALJIC

EXHIBIT 3
Page 2 of 4

Region IX

Irving Shore
San Francisco, CA

Edward Schiff*
David C. Linehan
Santa Barbara, CA

Region X

Robert C. Wetherholt*
Gordon H. Callow
Raymond H. Warns
Jack Heller
Seattle, WA

*ALJIC

EXHIBIT 3
Page 3 of 4

ALJs INVOLVED IN ONGOING BELLMON REVIEW

Frank B. Borowiec
Rafael Buono-Petrilli
Gordon M. Callow
Joseph C. Collins, Jr.
Thomas J. D'Aquila
Clayton A. Dietrich
Jack Heller
James G. Henry
James S. Higgins
Joseph E. Hodgson
Richard L. Jandt
Michael J. John
John T. Kelly
James A. Kempker
David J. Kozma
Morris H. Kross
James J. Lawwill*
David C. Linehan
John F. Loehr
Corwin G. Muse, Jr.
David E. O'Neil
Harry E. Pickering
Alfred A. Quillian
Jose J. Santaigo*
Edward Schiff*
Irving Shore
Milton P. Shore
Paul R. Stone
Nicholas G. Stucky
Robert C. Walsman
Raymond H. Warns
Barry M. Wesker*
Robert C. Wetherholt*

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EXHIBIT J
Page 4 of 4

ALJs INVOLVED IN ONGOING BELLMON REVIEW

Frank B. Borowiec
Rafael Buono-Petrilli
Gordon M. Callow
Joseph C. Collins, Jr.
Thomas J. D'Aquila
Clayton A. Dietrich
Jack Heller
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James S. Higgins
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Richard L. Jandt
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James A. Kempker
David J. Kozma
Morris H. Kross
James J. Lawwill*
David C. Linehan
John F. Loehr
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Alfred A. Quillian
Jose J. Santaigo*
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Milton P. Shore
Paul R. Stone
Nicholas G. Stucky
Robert C. Walsman
Raymond H. Warns
Barry M. Wesker*
Robert C. Wetherholt*

*ALJIC

EXHIBIT J
Page 4 of 4

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
DALLAS REGIONAL OFFICE

TO : J. Charles Collins, Jr.
Administrative Law Judge

DATE: August 9, 1982

Refer to: SG-F6

FROM : Regional Chief Administrative Law Judge
OHA, Dallas, Region VI

SUBJECT: Your Decision on , Dated June 1982

Please refer to language in your decision dated June 23, 1982 wherein you describe yourself as being "targeted." This statement seems to have a negative connotation which is not consistent with the intent of decisional review.

My greater concern, however, is for the claimant in that I feel this type statement may confuse or create anxiety for a person who already has enough problems to deal with.

Surely you will agree that this is not the proper forum within which to attack the issue of ALJ decisional review.

I also appreciate the fact that you were attempting to help the claimant, but note that claimants are given ample notice of appellant procedures.

Thanks for your consideration in future decisions.

Harold G. Adams

Attachment

EXHIBIT 4
Page 1 of 2

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
DALLAS REGIONAL OFFICE

TO : J. Charles Collins, Jr.
Administrative Law Judge
OHA, New Orleans

DATE: October 28, 1982

SG-P6
CA-3-3

FROM : Regional Chief Administrative Law Judge
OHA, Dallas, Region VI

SUBJECT: Your Decision in the Case of [redacted], Dated September 13, 1982

The Office of the Chief Administrative Law Judge has observed that language contained in the first paragraph on Page 3 of the subject decision is inappropriate.

I note that concerns in this regard were previously communicated to you, relative to similar language, by my memorandum of August 9, 1982, Subject: Your Decision on , Dated June 23, 1982, (copy attached). As I noted in that prior memorandum, language of this nature seems to serve no worthwhile purpose and may, on the contrary, add to the problems of already troubled claimants.

I strongly urge you to reconsider the continued use of such language in your decisions.

Harold G. [redacted]

EXHIBIT 4
Page 2 of 7

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Office of Hearings & Appeals
200 Oil & Gas Building
1100 Tulane Avenue
New Orleans, Louisiana 70112

November 9, 1982

Harold G. Adams
Regional Chief Administrative Law Judge
Office of Hearings and Appeals
Regional Office
Room 14B1, 1100 Commerce Street
Dallas, TX 75202

Dear Harold:

I have your several memoranda on my Bellmon warning paragraph which I include in all decisions favorable to the claimant which reads as follows:

> Claimant should be informed that the undersigned Administrative Law Judge has been "targeted" for review by the Social Security Administration under the Bellmon Amendment (Section 304(g) of P.L. 96-265 the "Social Security Disability Amendments of 1980"), and it may, therefore, be necessary to enforce this decision through applicable laws and regulations in the appropriate United States District Court.

Your first memorandum dated August 9, 1982 states that the use of the word "targeted" is negative. This is quite true. However, this language is not my own. It is derived from the records of the Social Security Administration which is better set out in the attached excerpt from the printout of the House Subcommittee on Social Security.

The use of the Bellmon Amendment to manipulate the reversal rates of Administrative Law Judges constitutes a denial of due process and equal protection of law.

This abuse gives rise to a personal action against persons involved in its application. I do not intend to risk my property nor my professional reputation by giving even an appearance of taking part in the violation of the claimant's basic constitutional rights.

Accordingly, I must continue the use of this warning paragraph.

EXHIBIT 4
PAGE 2 OF 7

Again, I note in your memorandum of October 28, 1982 that you received a copy of this decision from the "Office of the Chief Administrative Law Judge". A reading of the Social Security Act and the position description of the Administrative Law Judge as prepared by the Merit System Protection Board will show that my decisions are not reviewable before publication and after publication only by the Appeals Council as provided by law.

It is further noted that the distribution of this decision to persons other than the Appeals Council is a violation of this particular claimant's privacy.

I strongly urge that you protect yourself personally in this matter.

With warmest personal regards, I am,

Yours very truly,

J. Chas. Collins, Jr.
Administrative Law Judge

cc: Senator Levin

EXHIBIT 4/
Page 4 of 7

DEPARTMENT OF HEALTH & HUMAN SERVICES — Social Security Administration

Refer to SGA3

Memorandum

Date MAR 2 9 1983

From Office of the Chief Administrative Law Judge

Subject Decisional Language

To Joseph C. Collins, Jr.
Administrative Law Judge
New Orleans

A recent review of your decisions by the Appeals Council has revealed that you are using a closing paragraph which is inappropriate, inaccurate and misleading. You inform the claimants that you have been "targeted" for review under the Bellmon Amendment, a matter which is totally irrelevant to the purpose of a decision, which is to reach a conclusion on the claimant's disability based on findings of fact which are supported by the medical and other evidence presented at the hearing. It is an inappropriate place for you to mention personal views about legislation passed by Congress or internal operating procedures of the Social Security Administration. In addition, it is totally inaccurate to state that because you are on review, the claimant might have to enforce the decision in the United States District Court. The appellate procedure for all claimants is set forth in the Social Security laws and regulations and is not altered by the Bellmon Admendment. The decisions of an administrative law judge are never "enforced" by a United States District Court. As you should be aware, the court serves an appellate function and may affirm, reverse or remand the final decision of the Secretary.

In the future, you should refrain from giving this inaccurate information in your decisions. The notice to the claimants informs them of their appeal rights and of the Appeals Council's own motion authority. It is therefore unnecessary to inform them again in the body of the decision.

Philip T. Brown
Chief Administrative Law Judge

EXHIBIT 4
Page 5 of 7

New Orleans, Louisiana 7011[illegible]

APR 4 1983

5073
Office of Hearings and Appeals

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

April 19, 1983

REFER TO:

BUREAU OF HEARINGS AND APPEALS

Chief Administrative Law Judge Philip T. Brown
Office of Hearings and Appeals
U. S. Social Security Administration
3833 North Fairfax Drive
The IBM Building
Fourth Floor
Arlington, Virginia 22203

Dear Judge Brown:

Your letter of March 28, 1983 has been received, and it has been submitted to counsel in The Association of Administrative Law Judges, Inc. v. Margaret M. Heckler, et al.

In the meantime, under the Freedom of Information Act, 5 U.S.C. 552, et seq., please give me copies of any memoranda or communications between the Appeals Council and you concerning their "recent review" to which you refer in your letter. Please also give me copies of any correspondence from you to Regional Chief Judge Harold G. Adams whereby you transmitted to him my decisions in the matter of "M---L---" of June 26, 1982 and "S---L---" of September 13, 1982.

Yours very truly,

J. Charles Collins, Jr.
Administrative Law Judge

Office of Hearings and Appeals
Social Security Administration
Suite 2300
Fisk Federal Building
1661 Canal Street
New Orleans, Louisiana 70112

EXHIBIT 4
Page 1 of 2

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to SGR2

Memorandum

Date SEP 12 1983

From Chief Administrative Law Judge

Subject Removal from Bellmon Own Motion Review -- ACTION

To Joseph C. Collins, Jr.
Administrative Law Judge
New Orleans

As you are aware, on October 1, 1981, we implemented an ongoing review of hearing decisions issued under section 221(d) of the Social Security Act, pursuant to section 304(g) of P.L. 96-265 (the Social Security Amendments of 1980). Your title II and concurrent disability allowance decisions have been subject to own motion review under this ongoing process.

This is to inform you that your decisions are no longer being selected for review. Therefore, effective immediately, your allowance decisions should be released directly to the appropriate effectuating components.

We appreciate the cooperation you have given us in connection with this program.

Philip T. Brown

cc:
ALJIC
RCALJ
OFA

EXHIBIT 4
PAGE 7

Georgia
Head
Injury
Foundation
Inc.

A Chapter of the
National Head Injury
Foundation, Inc.

March 29, 1984

Mr. John J. Salmon, Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Room 1102, Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Salmon:

I found out too late that there was a public hearing on Social Security Disability in Atlanta, March 23, 1984. I would liked to have addressed the group on some problems that exist for the head injured person. Many head injured people are denied Social Security Disability benefits or lose their benefits due to inadequate medical evaluations. Head injury, unlike most physical limitations, is not always "visible" in nature. Many problems of head injured people have to do with decreased attention span and concentration, difficulty with memory and judgment, personality changes and behavioral problems that prevent them from working in our present work force. It may take some neuropsychological testing to measure the severity of disability for head injury.

Secondly, getting a head injured person back into productive work is very time consuming and may be a gradual move. Because of this, Social Security Disability benefits need to be gradually adjusted down as the head injured person increases his ability to work. The present system, mixed with the low success of full time employment for head injured persons, removes some incentives for work. These people desperately need their disability medicare health insurance and supplements for income. They just cannot afford to gradually get back to work.

Another issue has to do with those receiving Social Security Disability and Workmens' Comp. The adjusted payment for the receipt of Workmens' Comp should not be subtracted from the childrens' benefits. This should come off the disabled person's benefits since he/she is the person to whom Workmens' Comp benefits comes to.

Thank you for this opportunity to address these very important issues.

Very truly yours,

Marty Beaver

Marty Beaver
President

MB/cp

Enclosures

THE LUPUS FOUNDATION OF AMERICA, INC.
GREATER ATLANTA CHAPTER
(formerly the Lupus Erythematosus Foundation, Inc.)

2814 New Spring Road — Room 304 A — Atlanta, Georgia 30339 — (404) 432-9675

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March 22, 1984

The Honorable Wyche Fowler, Jr.
Subcommittee on Social Security
Committee on Ways and Means
United States Congress
(Atlanta, Georgia)

Re: Hearing on Status of Continuing Disability Reviews - March 23, 1984

Congressman Fowler:

My name is Jeanette Walters, and I am writing to you in my capacity as a lupus patient and President of The Lupus Foundation here in Georgia. I urge your support of H.R. 3755 and applaud your hearing set for March 23, 1984 in Atlanta. I am personally unable to attend this hearing; however, I would like for your Committee to consider the following testimony.

Definition of Lupus (according to the National Institutes of Health of the Department of Health and Human Services):

"Systemic lupus erythematosus (also known as lupus, or SLE) is a potentially serious, complicated, generalized, inflammatory connective tissue disease that can affect many different organs of the body in varying combinations. The vast majority of lupus patients, about 90 percent, are young women. The disease usually begins in adolescence or in young adult life. Although SLE may start acutely, the course of the disease is usually chronic and undulating, with periods of activity alternating with periods of remission. . .

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The most common manifestations of SLE, in decreasing order of frequency, are arthritis, fever, a red skin rash (especially in sun-exposed areas), pleurisy (causing chest pain), kidney disease, brain involvement, pneumonia, and heart disease. In addition, during periods of active lupus most patients have one or more blood abnormalities such as anemia, a low white cell count, and/or a low platelet count. Criteria for the classification of SLE have been created, thoroughly tested, and found to be useful. . ."

Lupus as a Disabling Illness

There are an estimated 35,000 lupus patients in the State of Georgia; well over 500,000 nationwide with an estimated 50,000 new cases diagnosed yearly, and with 5,000 fatalities. Many lupus patients rely entirely upon disability income, either having been employed and having to quit as their lupus disease left them debilitated, or never having been able to work, having received a diagnosis in their teen years.

Lupus erythematosus is an insult to the patient in many ways. Its course is erratic and unpredictable. There is no one test that, done one time, can conclusively diagnose lupus. Diagnosis of lupus requires a thorough examination, medical history, accounting of signs and symptoms, and repeated batteries of serological (blood) testing. Only after this can a diagnosis of lupus be attained.

Lupus erythematosus has as its most persistent symptoms low-grade fever, chronic fatigue, joint swelling, inflammation and arthritis, chronic headaches, changes in blood levels, depression, constant pain and involvements of various organs in the body. The reason lupus is so difficult to diagnose and, once diagnosed, so difficult to predict is that it is an auto-immune disorder. This means that my body, for instance, will read its own tissues (collagen, which makes up most of the connective tissue, or the body's "glue") as foreign, and attacks it, causing inflammation, injury and permanent damage.

Lupus can and does progress to cause involvement and injury in the kidneys, brain, heart, lungs, bone, joints, etc. Although some lupus patients can be controlled with passive therapy, most patients require extensive medical care consisting of monthly (or more frequently than that) doctor appointments, expensive medications (my own bill runs $100.00+ a month) and concurrent costs. Lupus patients are not on the disability rolls because they are looking for easy street. Lupus patients have wound up on disability rolls for one reason, and one reason alone: THEY ARE DISABLED.

How the Current Review/Administration of Social Security Disability Adversely Impacts Lupus Patients

I have already pointed out that lupus patients seek Disability income because they are forced to, not because they want to. Many lupus patients are highly motivated, industrious and intelligent; yes, most are college-aged or young, upwardly mobile and educated adults. There are a number of insults the current review standards here in the State of Georgia subject lupus patients to:

(1) The thinking of individuals at the State Agency level is that lupus is acute, not chronic, when in fact, it is both. It is uninformed and shallow thinking, indeed, that assumes that, because you have not been hospitalized in the past three, six, whatever months, you are no longer disabled. Disability is not transient. Whatever caused the disability causes the continued disability.

(2) I have stated that lupus does wax and wane. However, it does so on such an unpredictable course that, were a lupus patient to think she felt well enough to re-enter the work force, she may once again have to quit within the week, month, whatever...and her having re-entered the work force would jeopardize her disability standing with Social Security. We have a number of people in our Chapter who have been arbitrarily and capriciously terminated by Social Security under the guise of good Republican housekeeping. I'm sorry to state the issue in a partisan manner but this is not Democratic logic. So, the system perpetuates itself. If a patient feels well enough to try to work, they may not, for they fear relapse and subsequent loss of earning ability as well as Disability income. For others, there is a world of difference as to feeling well enough to be able to get yourself up, fed and dressed...and holding "substantial gainful employment" in the world of work.

(3) Lupus erythematosus requires careful scrutiny in the diagnostic stage, yet Social Security can and does subject recipients in the review stage to see its own retained physicians who may (and in many cases, DO NOT) not know anything about lupus. No physician can diagnose lupus on the basis of just one office visit. Even an expert...but Social Security seems to think it can. This is something the medical world needs to know about, if Social Security doctors have technology that enable them to diagnose better than leading experts in the field!!!

(4) Lupus patients are adversely affected by stress, and are admonished by their physicians to avoid it at all costs. The arbitrary, capricious and designedly frustrating labrynth that Social Security puts its recipients through is stress-laden even for the most hale and hardy of individuals. I feel sure this is a deliberate, built-in deterrent in the review stage.

This inherent harrassment has simply got to stop. The infamous "grid" is so biased against patients that it's no wonder some people would rather do anything before having to submit themselves to the scrutiny of the Social Security office and the State Agency in the review process.

(5) There is a basic lack of consideration afforded the primary and treating physician of a lupus patient. It is obtuse and unfair for Social Security to ignore the findings of a physician or group of physicians who are knowledgeable in the diagnosis and treatment of lupus - yet, this is what happens, every day.

(6) Disability income recipients do not aspire to upper income bracket levels. They do not have earning power, this is true. They are, however, locked into a rather spartan lifestyle based on what they DO receive from Social Security. More frightening to individuals whose disability is being reviewed than the loss of their disability is the loss of MEDICARE which may follow. Removing medical care from a lupus patient is, in my opinion, equal to signing a death warrant. This is what can and does happen, and something simply MUST be done about it.

(7) Lupus patients on disability rolls often must seek the help of an advocate; in most cases, an attorney, to help them legally, morally and psychologically face what awaits them in the review process. Advocacy carries a high price-tag which many patients cannot afford. There is nothing available to help patients cooperate with and deal with the system.

Conclusion

I represent the 800 members of The Lupus Foundation here in the State of Georgia. Atlanta has sub-chapters in Augusta, Savannah and Columbus, with support groups in Macon and Albany. For those of us who are already on the rolls, as well as those of us who, one day, may not be able to avoid applying for disability, I implore you, on our behalf: CONTINUE TO LOBBY FOR AND ACHIEVE THE PASSAGE OF H.R. 3755. Government is FOR and BY the people. Say what has to be said where it has to be said and, for God's sake, put a stop to the current handling of Disability recipients. Thank you.

Cordially,

Jeanette M Walters

Jeanette M. Walters
Chapter President

cc: Sergio Finzi, Ph.D., President, National Office

March 24 1984
SS No. 255-46-9850

To Committee on ways and Means;

This is in reference to the hearing you had in Atlanta on disabili I did not know about it until the afternoon it was held.

I have wrote Con Ed Jenkins on serveral occassions in reference to my case. I appreciated his interest and his letters.

I became disabilied on Sept 29 1977 and received SS until Aug 1982. My checks were cut off then receiving last check on Dec 1 1982. Since then I have followed the process and have been turned down at all steps. My attorney filed a case in Federal Court on Nov 21 1983. I have not heard from this.

I was turned down by Adm Law Judge in August 1983(Judge Alfred A Quillian.) I presented letters from 4 Doctors stating that I was totallydisabilied. Two letters were from two well known Nuro-Surgeons Dr. Flemning L Jolley who performed all operations on my back. The othe from Dr Roy Vandiver. Dr Richard A Payne and Dr R. V. Dronavilla Dr Richard A Payne is our family doctor. Dr Dronavilla is a Arthritis Specialisty.I also had a letters from 5 neighbors, whom I have known for 25 -30 years. I also had a letter from my pastor,stating that to the best of their knowledge that I was totallly disabilied.

I have Arthritis and High Bloos pressure. I have numbness in my left leg.

This has been the worst night mare of my life, not only the hardship for my family, not knowing what to expect next. I am still disabilied and if anything I am worst shape now than I was in 1977. I have been hospitalized in Jan 1984 for servepain and numbness of left leg. Dr Payne and Dr Kelly did nerve blocks to releive pain but did not help. I cannot buy all medication that I need due to finanica condition. No insurance since cut -off medicare. If I was able to do a any kind of work, [redacted] I sure would be doing it. The Adm Law Judge stated I could do secondary work, due to pain and medication that I take, I cannot drive or ride only for a short distance, cannot sit, stand,walk but for short period of time.

I think this is one of the worst blunders Mr Reagan has ever made against poor and disabilied American people. If they can send money and aid to the rest of the world, looks like they could at least give the American people the benefits that they have worked all their lives and payed into a system all the years that they have worked. I was injuried in a robbery while working that caused my back problems. It has ruined my life and futare financially. You do not live on SS you just exist. Any help or any good this letter does will be greatly appreciated.

Thank You

Frank Meaders
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WASHINGTON ADVOCATES FOR THE MENTALLY ILL
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Co-founder & affiliate of The National Alliance for the Mentally Ill

Subcommittee on Social Security #6
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.

March 26, 1984

Dear Subcommittee Members,

W/AMI is an organization comprised of families, patients, and friends who are dedicated to addressing the unmet needs of the severely mentally ill and their families. We are writing to you concerning the social security disability review process. During our March meeting, membership passed the following resolution:

"We consider it unjust to harass chronically ill people by denying them their support through SSI, and we oppose having them go through repeated reviews."

Moreover, we resent the implied assumption that chronically ... persons are making false claims, when in fact nearly two-thirds of those who appeal these terminations have their benefits restored after enduring a lengthy appeals process.

Much of this chaos is the result of pressure on the states in implement their own administrative procedures for this program in defiance of federal policy guidelines. Under "New Federalism," states are being asked to assume responsibilities they haven't the resources to carry forth. For the fourth consecutive year, slashes in low-income benefits and deficits near $200 billion are being used to finance a dangerous and wasteful military buildup.

We urge you to oppose the continuing onslaught against those persons in our society who are least able to care for themselves. Specifically, we urge you to restore the uniform national system of disability under social security, and to support H.R. 3755. This resolution provides:

- that the government must provide evidence of medical improvement in face to face interviews with beneficiaries;
- for a 9-month moratorium on reviews until regulations on medical listing and ability to work are revised by the SSA;
- for continuation of cash benefits for those cut off through the appeals process;
- that SSA must apply future decisions of federal circuit courts to all beneficiaries within the circuit.

Sincerely,

Eleanor Owen

Eleanor Owen, Executive Director

W/ AMI
A United Way Agency